

2490  
No. 11704

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,  
a public corporation,

Appellee.

PRIEST RAPIDS IRRIGATION DISTRICT,  
a public corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record  
IN THREE VOLUMES  
VOLUME I  
Pages 1 to 384

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Upon Appeal from the District Court of the United States  
for the Eastern District of Washington  
Southern Division

FILED  
JAN 23 1948



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

BERNARD H. RAMSEY,  
Special Assistant to the Attorney General,  
Miller Building,  
Yakima, Washington,  
Attorney for Petitioner, Appellant  
and Cross-Appellee.

MOULTON & POWELL,  
Kennewick, Washington, and  
J. K. CHEADLE  
Old National Bank Building,  
Spokane, Washington,  
Attorneys for Defendant, Appellee and  
Cross-Appellant.

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division

No. 128

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS,

Defendant.

### PETITION FOR CONDEMNATION

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and alleges as follows:

#### I.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 58; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507—77th Congress), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which act appropriated funds for such purposes.

## II.

That said property is required for use in connection with the establishment of the Gable Project, for a military reservation and for other military uses incident thereto. The property herein described is necessary adequately to provide for such purposes and has been selected by said Secretary of War for acquisition by the United States for the aforesaid uses, and the petitioner in good faith intends to use said property therefor.

## III.

The property sought to be acquired in these proceedings is situate in the above named district and division and is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to-wit:

## Area "A"

Beginning at the intersection of the East line of Section 31, T. 13 N. R. 28 E., with the Southerly or right bank of the Columbia River; thence

Meandering in a Northwesterly direction along the south Bank of the Columbia River to its intersection with the North-South center line of Sec. 4 T. 13 N. R. 25 E.; thence;

In a Southerly direction along the North-South center line of Secs. 4, 9, 16, and 21, to the S $\frac{1}{4}$  corner of Sec. 21; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

South along the West line of Sec. 27 and 34 to the Southwest corner of Sec. 34; T. 13 N. R. 25 E.; thence; [2\*]

East along the North line of Sec. 4, T. 12 N. R. 25 E. to the Northeast corner of Sec. 4; thence;

South along the West line of Secs. 3, 10, 15, 22, 27 to the Southwest corner of Sec. 27; thence;

East along the South line of Secs. 27 and 26 to the Southeast corner of Sec. 26; thence;

South along the West line of Sec. 36 to its Southwest corner; thence;

East along the South line of Sec. 26, T. 12 N., R. 25 E. and Sec. 31, T. 12 N. R. 26 E., to the Southeast corner of Sec. 31, thence;

South along the West line of Sec. 5, T. 11 N. R. 26 E., to its Southwest corner; thence;

East along the South line of Sec. 5 and 4 to the Southeast corner of Sec. 4; thence;

South along the West line of Sec. 10 to its Southwest corner; thence;

East along the South line of Secs. 10 and 11 to the Southeast corner of Sec. 11; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1 to its Southeast corner; thence;

North along the East line of Sec. 1 to its Northeast corner; thence;

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\* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.

East along the South line of Sec. 31, T. 12 N. R. 27 E. to the Southeast corner of Sec. 31; thence;

North along the East line of Sec. 31 to its Northeast corner; thence;

East along the South line of Sec. 29 to its Southeast corner; thence;

North along the East line of Sec. 29 to its Northeast corner; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

North along the East line of Sec. 21 to its Northeast corner; thence;

East along the South line of Sec. 15 to its Southeast corner; thence;

North along the East line of Sec. 15 to its Northeast corner; thence;

East along the South line of Sec. 11 to its Southeast corner; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1, T. 12 N. R. 27 E. and Sec. 6, T. 12 N., R. 28 E., to the Southeast corner of Sec. 6; thence;

North along the East line of Sec. 6, T. 12 N., R. 28 E., and Sec. 31, T. 13 N., R. 28 E. to its intersection with the Southerly bank of the Columbia River to the point of beginning.

Said lands are situate in Benton County, Washington, and contain 176,323 acres, more or less.

#### Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East,



West Meridian with the Westerly or right bank of the Columbia River; thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the South line of Section 20, Township 9 North, Range 29 East; thence West along the South line of Sections 20 and 19, Township 9 North, Range 29 East and Sections 24 and 23, Township 9 North, Range 28 East to the Southwest corner of Section 23; thence North along the West line of Section 23 to its Northwest corner; thence West along the South line of Section 15, and 16 to the Southwest corner of Section 16; thence North along the West line of Sections 16, 9 and 4, Township 9 North, Range 28 East, and Sections 33, 28, 21, 16, 9 and 4, Township 10 North, Range 28 East to the Northwest corner of Section 4; thence East along the North line of Sections 4, 3 and 2 to the point of beginning.

Said land contains 17,510 acres, more or less, and is situate in Benton County, Washington. [3]

Wherefore, your petitioner prays:

1. That the purpose of this condemnation be adjudicated to be a public use.
2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein described, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation to be determined thereby.



3. That the property hereinabove described be decreed to be the property of the United States.
4. That the court grant such other relief as shall seem proper in the premises.

EDWARD N. CONNELLY,  
United States Attorney.

HARVEY ERICKSON,  
Assistant United States  
Attorney.

HART SNYDER,  
Special Attorney, Depart-  
ment of Justice.  
Attorneys for Petitioner.

United States of America,  
Eastern District of Washington—ss.

Hart Snyder, being first duly sworn, upon oath deposes and says: that he is a duly appointed, qualified and acting Special Attorney for the Department of Justice, and as such makes this verification; that he has read the foregoing petition for condemnation, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

HART SNYDER.

Subscribed and sworn to before me this 23 day of February, 1943,

[Seal]            A. A. LaFRAMBOISE,  
Clerk, United States District Court for the  
Eastern District of Washington.

AUTHORIZING AND DIRECTING PETITION  
FOR CONDEMNATION

February 18, 1943

The Honorable  
The Attorney General  
Washington, D. C.

Dear Mr. Attorney General:

It is necessary and advantageous to the interest of the United States that certain lands situated in Benton County, State of Washington, be acquired for use in connection with the establishment of the Gable project.

Therefore, pursuant to the provisions of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917, (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507-77th Congress), which acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved July 2, 1942 (Public Law 649-77th Congress), which act appropriated funds for such purposes, it is requested that you cause the necessary proceedings to be instituted for the condemnation of the fee simple title to the lands above referred to, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines. Said lands aggregate 193,833 acres, more or less, and are more particularly described in the inclosed Exhibit "A". The names and addresses of the purported owners of said lands are set forth in the inclosed Exhibit "B".

The Act of Congress approved July 2, 1942, *supra*, appropriated funds to acquire the lands under consideration.

The aforementioned lands are to be utilized for the establishment of a military reservation, and for other military uses incident thereto, and the utmost haste in expediting this project is vital to the successful prosecution of the war. It is requested that, pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507-77th Congress), you procure an order of the court granting immediate possession of the aforesaid lands.

Appraisal reports and title evidence are being obtained under the supervision of Lt. Col. J. Mortimer Clark, Division Real Estate Officer, Pacific Division, 19 West South Temple Street, Salt Lake City, Utah, and the probable date of availability of appraisal reports and title evidence can be obtained by your field representatives from the Division Real Estate Officer. It is further requested that a copy of the petition be furnished direct to Lt. Col. Clark.

Inclosed herewith are two additional copies of Exhibits "A" and "B". Also enclosed is one copy of map designating the aforesaid lands. Additional copies of the map will be forwarded to you under separate cover.

Sincerely yours,

HENRY L. STIMSON,  
Secretary of War.

3 Inclosures:

1—Map

2—Exhibit “A” (in trip)

3—Exhibit “B” (in trip)

Pursuant to T. 28 U.S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

[Seal]

NORMAN U. LITTELL,

Assistant Attorney General,

Lands Division, Department of Justice.

[Endorsed]: Filed February 23, 1943.

---

[Title of District Court and Cause.]

MOTION FOR RIGHT OF IMMEDIATE  
POSSESSION

Comes now the petitioner herein and respectfully moves the court for an order granting the right of immediate possession, pursuant to the provisions of Title II, Section 201 of the “Second War Powers Act, 1942”, being Public No. 207, 77th Congress, approved March 27, 1942. This motion is based on the files and records herein and the following affidavit.

EDWARD M. CONNELLY,

United States Attorney.

HARVEY ERICKSON,

Ass't United States Attorney.

HART SNYDER,

Special Attorney, Department of Justice.

United States of America,  
Eastern District of Washington—ss.

Hart Snyder, being duly sworn, on oath says: that he is a special attorney for the Department of Justice; that the property described in the petition for condemnation herein is being acquired in time of war for military purposes at the request of the Secretary of War; that as provided in Title II, Section 201 of the "Second War Powers Act, 1942", being Public No. 507, 77th Congress, approved March 27, 1942, immediate possession of said property to the extent of the interest described in said petition is required in order that said property may be occupied, used and improved for [6] the purposes described in said petition; that an order should be entered herein granting to the petitioner the right of such immediate possession.

HART SNYDER,

Subscribed and sworn to before me this 23 day  
of February, 1943.

[Seal]            A. A. LaFRAMBOISE,  
Clerk, United States District Court, Eastern  
District of Washington.

[Endorsed]: Filed February 23, 1943.

[Title of District Court and Cause.]

ORDER GRANTING RIGHT OF  
IMMEDIATE POSSESSION

This matter having come on regularly this day upon petitioners' motion and affidavit for right of immediate possession and it appearing therefrom that the property described in the petition for condemnation is being acquired in time of war for military, naval, or other war purposes and that immediate possession thereof to the extent of the interest hereinafter described is required in order that said property may forthwith be occupied, used and improved for the purpose described in said petition and as provided in Title II, Section 201 of the "Second War Powers Act, 1942", being Public No. 507, 77th Congress, approved March 27, 1942, now therefore, it is hereby

Ordered that the right of immediate possession is hereby granted to the petitioner herein, the United States of America, of the property hereinafter described. It is further ordered that when the names and addresses of record owners and parties in possession are obtained, notice of the entry of this order shall be given to record owners and to any person who is, on this day, actually occupying or cultivating said described lands, such notice to be given by depositing certified copies hereof in the United States registered mail in envelopes addressed to each such person; provided, that when the person so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient.



Said property is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to-wit:

Area "A"

Beginning at the intersection of the East line of Section 31, T. 13 N. R. 28 E., with the Southerly or right bank of the Columbia River; thence

Meandering in a Northwesterly direction along the south Bank of the Columbia River to its intersection with the North-South center line of Sec. 4 T. 13 N. R. 25 E.; thence;

In a Southerly direction along the North-South center line of Secs. 4, 9, 16, and 21, to the S $\frac{1}{4}$  corner of Sec. 21; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

South along the West line of Sec. 27 and 34 to the Southwest corner of Sec. 34; T. 13 N. R. 25 E.; thence;

East along the North line of Sec. 4, T. 12 N. R. 25 E. to the Northeast corner of Sec. 4; thence;

South along the West line of Secs. 3, 10, 15, 22, 27 to the Southwest corner of Sec. 27; thence;

East along the South line of Secs. 27 and 26 to the Southeast corner of Sec. 26; thence;

South along the West line of Sec. 36 to its Southwest corner; thence;

East along the South line of Sec. 36, T. 12 N., R. 25 E. and Sec. 31, T. 12 N. R. 26 E., to the Southeast corner of Sec. 31, thence;

South along the West line of Sec. 5, T. 11 N. R. 26 E., to its Southwest corner; thence;

East along the South line of Sec. 5 and 4 to the Southeast corner of Sec. 4; thence;

South along the West line of Sec. 10 to its Southwest corner; thence;

East along the South line of Secs. 10 and 11 to the Southeast corner of Sec. 11; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1 to its Southeast corner; thence;

North along the East line of Sec. 1 to its Northeast corner; thence;

East along the South line of Sec. 31, T. 12 N. R. 27 E. to the Southeast corner of Sec. 31; thence;

North along the East line of Sec. 31 to its Northeast corner; thence;

East along the South line of Sec. 29 to its Southeast corner; thence;

North along the East line of Sec. 29 to its Northeast corner; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

North along the East line of Sec. 21 to its Northeast corner; thence;

East along the South line of Sec. 15 to its Southeast corner; thence;



North along the East line of Sec. 15 to its North-east corner; thence;

East along the South line of Sec. 11 to its South-east corner; thence;

North along the East line of Sec. 11 to its North-east corner; thence;

East along the South line of Sec. 1, T. 12 N. R. 27 E. and Sec. 6, T. 12 N., R. 28 E., to the Southeast corner of Sec. 6; thence;

North along the East line of Sec. 6, T. 12 N., R. 28 E., and Sec. 31, T. 13 N., R. 28 E. to its intersection with the Southerly bank of the Columbia River to the point of beginning.

Said lands are situate in Benton County, Washington, and contain 176,323 acres, more or less.

### Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East, West Meridian with the Westerly or right bank of the Columbia River; thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the South line of Section 20, Township 9 North, Range 29 East; thence West along the South line of Sections 20 and 19, Township 9 North, Range 29 East and Sections 24 and 23, Township 9 North, Range 28 East to the Southwest corner of Section 23; thence North along the West line of Section 23 to its Northwest corner; thence West along the South line of Section 15, and 16 to the Southwest corner of Section 16; thence North along the West line of

Sections 16, 9 and 4, Township 9 North, Range 28 East, and Sections 33, 28, 21, 16, 9 and 4, Township 10 North, Range 28 East to the Northwest corner of Section 4; thence East along the North line of Sections 4, 3 and 2 to the point of beginning.

Said land contains 17,510 acres, more or less, and is situate in Benton County, Washington.

Dated this 23 day of February, 1943.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

HART SNYDER,  
Special Attorney for the De-  
partment of Justice.

[Endorsed]: Filed February 23, 1943.

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[Title of District Court and Cause.]

AMENDED PETITION  
FOR CONDEMNATION

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and alleges as follows:

I.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pur-

suant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918, (40 Stat. 518; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507-77th Congress), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649-77th Congress), which act appropriated funds for such purposes.

## II.

That said property is required for use in connection with the establishment of the Hanford Engineering Project, for a military reservation and for other military uses incident thereto. The property herein described is necessary adequately to provide for such purposes and has been selected by said Secretary of War for acquisition by the United States for the aforesaid uses, and the petitioner in good faith intends to use said property therefor.

## III.

The property sought to be acquired in these proceedings is situate in the above named district and is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, excepting, however, all existing easements for railroad purposes in favor of the Chicago, Milwaukee, St. Paul

and Pacific Railroad Company, which easements in favor of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company are included in the property to be acquired in these proceedings, in and to the following described lands, to-wit:

Area "A"

Beginning at the intersection of the East line of Section 31, Township 13 North, Range 28 East, with the Southerly or right bank of the Columbia River;

Thence meandering in a Northwesterly direction along the South bank of the Columbia River to its intersection with the North-South center line of Section 5, Township 13 North, Range 25 East;

Thence in a Southerly direction along the North-South center line of Sections 5, 8, 17 and 20 to the South quarter corner of Section 20;

Thence East along the South line of Section 20 to its Southeast corner;

Thence South along the West line of Section 28 and 33 to the Southwest corner of Section 33; Township 13 North, Range 25 East;

Thence East to the Northwest corner of Section 4, Township 12 North, Range 25 East;

Thence South along the West line of Sections 4, 9, 16 and 21 to the Southwest corner of Section 21; thence East to the Southeast corner of Section 21; thence South to the Southwest corner of Section 27, Township 12 North, Range 25 East;

Thence East along the South line of Section 27 and 26 to the Southeast corner of Section 26, Township 12 North, Range 25 East;

Thence South along the West line of Section 36 to its Southwest corner;

Thence East along the South lines of Section 36 Township 12 North, Range 25 East and Section 31, Township 12 North, Range 26 East, to the Southeast corner of Section 31;

Thence South along the West line of Section 5, Township 11 North, Range 26 East, to its Southwest corner;

Thence East along the South lines of Sections 5 and 4, Township 11 North, Range 26 East, to the Southeast corner of Section 4;

Thence South along the West line of Section 10, Township 11 North, Range 26 East to its Southwest corner; [12]

Thence East along the South lines of Sections 10 and 11 to the Southeast corner of Section 11;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South line of Section 1, Township 11 North, Range 26 East, to its Southeast corner;

Thence North along the East line of Section 1 to its Northeast corner;

Thence East along the South line of Section 31, Township 12 North, Range 27 East to the Southeast corner of Section 31;

Thence North along the East line of Section 31 to its Northeast corner;

Thence East along the South line of Section 29, Township 12 North, Range 27 East, to its Southeast corner;



Thence North along the East line of Section 29 to its Northeast corner;

Thence East along the South line of Section 21, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 21 to its Northeast corner;

Thence East along the South line of Section 15, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 15 to its Northeast corner;

Thence East along the South line of Section 11, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South lines of Section 1, Township 12 North, Range 27 East, and Section 6, Township 12 North, Range 28 East, to the Southeast corner of Section 6;

Thence North along the East lines of Section 6, Township 12 North, Range 28 East and Section 31, Township 13 North, Range 28 East to its intersection with the Southerly bank of the Columbia River, the point of beginning.

Said lands are situate in Benton County, Washington, and contain 182,723 acres, more or less.

#### Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East,

W.M., with the Westerly or right bank of the Columbia River;

Thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the North line of the Yakima River;

Thence Westerly and Northwesterly following the meanders of the Yakima River to its North-westernmost corner of intersection with the West line of Section 4, Township 9 North, Range 28 East;

Thence North along the West line of said Section 4 and continuing Northerly along section lines through Township 10 North, Range 28 East to the Northwest corner of Section 4, Township 10 North, Range 28 East, thence Easterly along section lines to the point of beginning.

Said lands contain 17,000 acres, more or less, and are situate in Benton County, Washington.

#### Area "E"

Sections 7, 8, 9, 16, 17 and 18, all in Township 13 North, Range 24 East.

Also the West half of Section 10 and the West half of Section 15, all in Township 13 North, Range 24 East.

Also Sections 1, 2 and 3, all in Township 13 North, Range 23 East.

Said lands are situate in Benton, Yakima and Grant Counties Washington, and contain 6,400 acres, more or less. [14]

Wherefore, your petitioner prays:

1. That the purpose of this condemnation be adjudicated to be a public use.
2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein described, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation be determined thereby.
3. That the property hereinabove described be decreed to be the property of the United States.
4. That the court grant such other relief as shall seem proper in the premises.

EDWARD J. CROWLEY.

JOSEPH L. THOMAS,

Special Attorneys for the De-  
partment of Justice.

Attorneys for Petitioner.

United States of America,  
Eastern District of Washington—ss.

Edward J. Crowley, being first duly sworn, upon oath deposes and says: That he is a duly appointed, qualified and acting Special Attorney for the Department of Justice, and as such makes this verification; that he has read the foregoing amended petition for condemnation, knows the contents



thereof and that the same is true to the best of his knowledge, information and belief.

EDWARD J. CROWLEY.

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal]                      A. A. LaFRAMBOISE,

Clerk, United States District Court for the Eastern District of Washington.

Filed April 22, 1943.

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AUTHORIZING AND DIRECTING AMENDED  
PETITION FOR CONDEMNATION

April 12, 1943

The Honorable  
The Attorney General  
Washington, D. C.

Dear Mr. Attorney General:

Reference is made to the condemnation proceeding entitled United States vs. 193,833 acres of land, more or less, situate in Benton County, Washington, Clements P. Alberts, et al., now pending in the United States District Court for the District of Washington, to acquire certain lands for use in connection with the Hanford Engineering Works.

It has been administratively determined to be advantageous to the interest of the United States to amend the petition in condemnation and order of possession in order to correctly and fully describe all of the lands to be affected by this proceeding, and to further amend said petition and order to provide for the acquisition of certain existing easements for railroads in the lands involved.

It is requested, therefore, that you take the necessary action to amend the petition and order of possession to include all of the lands described in the attached Exhibit "A" as Areas "A", "D", and "E", and to further amend the petition and order of possession to set forth the following described estate to be acquired in said land: The fee simple title thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, *excepting, for public utilities, for railroads and for pipe lines, excepting*, however, all existing easements for railroad purposes in favor of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Inclosed are two additional copies of Exhibit "A" and four copies of map designating the lands above referred to.

Sincerely yours,

HENRY L. STIMSON,  
Secretary of War.

Inclosures:

- 1—Exhibit "A" (in trip)
- 2—Map (4 copies)

Pursuant to T. 28, U.S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

[Seal]

NORMAN U. LITTELL,  
Assistant Attorney General  
Lands Division, Department of Justice.

Filed April 22, 1943.

[Title of District Court and Cause.]

MOTION FOR RIGHT OF IMMEDIATE  
POSSESSION ON AMENDED PETITION

Comes now the petitioner herein and respectfully moves the court for an order granting the right of immediate possession as to property not included in the order granting right of immediate possession entered in the above entitled proceedings on February 23, 1943. This motion is made pursuant to the provisions of Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, and is based on the files and records herein and the following affidavit.

EDWARD J. CROWLEY,  
JOSEPH L. THOMAS,

Special Attorneys for the  
Department of Justice.

United States of America,  
Eastern District of Washington—ss.

Edward J. Crowley, being first duly sworn, on oath says: That he is a special attorney for the Department of Justice; that the property described in the amended petition for condemnation herein is being acquired in time of war for military purposes at the request of the Secretary of War; that an order was entered herein on February 23, 1943, granting to the United States of America the right of immediate possession to all the property de-

scribed in the petition for condemnation filed herein on February 23, 1943; that as provided in Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, immediate possession of said property not [17] included in said order granting the right of immediate possession, to the extent of the interest described in said amended petition, is required in order that said property not included in said order granting right of immediate possession may be occupied, used and improved for the purposes of said act and for the purposes described in said amended petition; that, as shown by the amended petition on file herein, additional property has been included in these proceedings; that an order should be entered herein granting to the petitioner the right of such immediate possession as to such property not included in said order granting right of immediate possession entered on February 23, 1943.

EDWARD J. CROWLEY.

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal]

A. A. LaFRAMBOISE,  
Clerk, United States District  
Court, Eastern District of  
Washington.

[Endorsed]: Filed April 22, 1943. [18]

[Title of District Court and Cause.]

ORDER GRANTING RIGHT OF IMMEDIATE  
POSSESSION AS TO ADDITIONAL  
PROPERTY [19]

This matter having come on regularly this day upon petitioner's motion and affidavit for right of immediate possession, and it appearing therefrom that the property described in the amended petition for condemnation is being acquired in time of war for military, naval or other war purposes, and that immediate possession of the property described in the amended petition herein and not included in the order granting right of immediate possession entered herein on February 23, 1943, to the extent of the interest hereinafter described is required in order that said additional property may forthwith be occupied, used and improved for the purposes described in said amended petition and as provided in Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, and it appearing that an order granting right of immediate possession was heretofore entered in the above entitled proceedings on February 23, 1943, as to part of the property hereinafter described, it is hereby

Ordered that the right of immediate possession is hereby granted to the petitioner herein, United States of America, as to that portion of the property hereinafter described for which possession was not heretofore granted by said order entered herein on



February 23, 1943, said right of possession hereby granted being in addition to that granted by said order of February 23, 1943.

It Is Further Ordered that when the names and addresses of record owners and parties in possession are obtained, notice of the entry of this order shall be given to record owners and to any person who is, on this day, actually occupying or cultivating said described lands which are not included in said order granting right of immediate possession entered herein on February 23, 1943.

It Is Further Ordered that such notice be given by depositing uncertified copies hereof in the United States mail, by ordinary mail, in envelopes addressed to each such person, provided, that when the persons so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient.

Said property is described as follows, to-wit: [20]

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, excepting, however, all existing easements for railroad purposes in favor of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which easements in favor of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company are included in the property to be acquired in these proceedings, in and to the following described lands, to-wit:

## AREA "A"

Beginning at the intersection of the East line of Section 31, Township 13 North, Range 28 East, with the Southerly or right bank of the Columbia River;

Thence meandering in a Northwesterly direction along the South bank of the Columbia River to its intersection with the North-South center line of Section 5, Township 13 North, Range 25 East;

Thence in a Southerly direction along the North-South center line of Sections 5, 8, 17 and 20 to the South quarter corner of Section 20;

Thence East along the South line of Section 20 to its Southeast corner;

Thence South along the West line of Section 28 and 33 to the Southwest corner of Section 33; Township 13 North, Range 25 East;

Thence East to the Northwest corner of Section 4, Township 12 North, Range 25 East;

Thence South along the West line of Sections 4, 9, 16 and 21 to the Southwest corner of Section 21; thence East to the Southeast corner of Section 21; Thence South to the Southwest corner of Section 27, Township 12 North, Range 25 East;

Thence East along the South line of Section 27 and 26 to the Southeast corner of Section 26, Township 12 North, Range 25 East;

Thence South along the West line of Section 36 to its Southwest corner;

Thence East along the South lines of Section 36, Township 12 North, Range 25 East and Section 31, Township 12 North, Range 26 East, to the Southeast corner of Section 31;

Thence South along the West line of Section 5, Township 11 North, Range 26 East, to its Southwest corner;

Thence East along the South lines of Sections 5 and 4, Township 11 North, Range 26 East, to the Southeast corner of Section 4;

Thence South along the West line of Section 10, Township 11 North Range 26 East to its Southwest corner; [21]

Thence East along the South lines of Sections 10 and 11 to the Southeast corner of Section 11;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South line of Section 1, Township 11 North, Range 26 East, to its Southeast corner;

Thence North along the East line of Section 1 to its Northeast corner;

Thence East along the South line of Section 31, Township 12 North, Range 27 East to the Southeast corner of Section 31;

Thence North along the East line of Section 31 to its Northeast corner;

Thence East along the South line of Section 29, Township 12 North, Range 27 East, to its Southeast corner;

Thence North along the East line of Section 29 to its Northeast corner;

Thence East along the South line of Section 21, Township 12 North, Range 27 East to its Southeast corner;



Thence North along the East line of Section 21 to its Northeast corner;

Thence East along the South line of Section 15, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 15 to its Northeast corner;

Thence East along the South line of Section 11, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South lines of Section 1, Township 12 North, Range 27 East, and Section 6, Township 12 North, Range 28 East, to the Southeast corner of Section 6;

Thence North along the East lines of Section 6, Township 12 North, Range 28 East and Section 31, Township 13 North, Range 28 East to its intersection with the Southerly bank of the Columbia River, the point of beginning.

Said lands are situate in Benton County, Washington, and contain 182,723 acres, more or less. [22]

#### AREA "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East, W.M., with the Westerly or right bank of the Columbia River;

Thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the North line of the Yakima River;

Thence Westerly and Northwesterly following the meanders of the Yakima River to its Northwestern-most corner of intersection with the West line of Section 4, Township 9 North, Range 28 East;

Thence North along the West line of said Section 4 and continuing Northerly along section lines through Township 10 North, Range 28 East to the Northwest corner of Section 4, Township 10 North, Range 28 East; thence Easterly along section lines to the point of beginning.

Said lands contain 17,000 acres, more or less, and are situate in Benton County, Washington.

#### AREA "E"

Sections 7, 8, 9, 16, 17 and 18, all in Township 13 North, Range 24 East.

Also the West half of Section 10 and the West half of Section 15, all in Township 13 North, Range 24 East.

Also Sections 1, 2 and 3, all in Township 13 North, Range 23 East.

Said lands are situate in Benton, Yakima and Grant Counties, Washington, and contain 6,400 acres, more or less.

Dated this 22nd day of April, 1943.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

EDWARD J. CROWLEY,  
Special Attorney for the  
Department of Justice.

[Endorsed]: Filed April 22, 1943. [23]

[Title of District Court and Cause.]

MOTION ESTABLISHING SEQUENCE  
OF TRIAL

Comes Now Priest Rapids Irrigation District and moves the Court for an order requiring and directing that the above entitled case be set down for trial as against this defendant in advance of the trial of any and all cases against owners of land within the boundaries of Priest Rapids Irrigation District, or that if cases of the United States against individual owners of land are tried in advance of the case against this defendant, the value of its assets described in the following affidavit, distributable to such individual owners, be excluded from consideration in the award of damages or compensation to be paid to such individual owners, for the reason that it will be impossible to determine the rights of said individuals at such trial and for the reason that it will be impossible to determine the value of the total assets of the district to be distributed until provision has been made for the payment out of the proceeds of such assets of the outstanding bonds of the district and any and all floating indebtedness of the district in the form of warrants or otherwise, and in support of its motion submits the files and records herein and the following affidavit.

MOULTON & POWELL,  
Attorneys for Priest Rapids  
Irrigation District.

Copy received May 15, 1943.

EDWARD J. CROWLEY,  
Of Attorneys for Petitioner

In the District Court of the United States  
For the Eastern District of Washington

United States of America,  
Eastern District of Washington—ss.

M. M. Moulton, being first duly sworn, on oath states:

He makes this affidavit in support of the attached motion. He is one of the attorneys appearing herein for Priest Rapids Irrigation District; that said district is an irrigation district regularly organized under the laws of the State of Washington relating to the establishment and government of irrigation districts, particularly the Act of March 20, 1890, and laws supplemental thereto and amendatory thereof. That the district owns certain operating facilities, consisting principally of a hydro-electric power plant constructed at Priest Rapids on the Columbia River in Yakima County, together with transmission lines, pumps, motors, canals, and pipelines, which power plant is used in part for the generation of power for the delivery of water through its pumps and pipelines and canals upon land held in private ownership in the district. That said power plant is capable of generating, and does generate as operated by the district, a large volume of surplus electric energy, which surplus is sold by the district to the Pacific Power & Light Company on an existing contract which yields to the district a substantial net revenue over and above the cost of operation.

That it is claimed by engineers employed by the district that the generating capacity of said power plant is capable of being very substantially increased at a low cost. That said power plant, transmission lines, pumps, motors, pipelines and canals, including the power canal for the diversion of water from the Columbia River to the power plant, have a value which is unknown to affiant at this time, but which, upon estimates made by competent engineers, exceeds \$500,000.00. That upon liquidation and dissolution of Priest Rapids Irrigation District, which must follow the taking of its property by the United States, said [25] assets would belong to the owners of the land in the district and that said owners should not be deprived of their ownership and their right to share in the distribution of said assets by having their land taken from them and the title thereto vested in the United States until the value of said assets has been determined and the distribution thereof secured to the district land owners.

Affiant has been informed and believes, and upon such information and belief states, that the representatives of the United States who have been engaged in appraising the assets of the private land owners in the district have not taken into consideration in arriving at their values the existence of said power plant and district assets, and that they have not given to said privately owned lands a value which includes the value of the district assets.

Affiant further states that if the United States acquires title to the privately owned lands in the



district before the value of the district assets has been ascertained and distributed there would be a strong probability that the United States would as a matter of law become the owner, through the irrigation district, of all the district assets and would thus acquire title to those assets without compensation being paid to the existing land owners.

Affiant further states that large numbers of landowners in the district are unwilling to sign voluntary agreements providing for the sale of their lands to the United States without protection against the United States acquiring the individual's interest in the district assets without compensation. That if the value of the district assets is ascertained and made unconditionally available to the landowners in addition to the value of their lands, it is the belief of affiant that all landowners in the district will accept the appraised value placed upon their lands by the Government, except in those cases where said value is substantially below the reasonable value.

Affiant further states that the district has an outstanding bonded indebtedness in the approximate amount of \$190,000.00, and that the bonds evidencing said indebtedness are a lien on all of the aforesaid [26] district assets and that it is necessary that the value of the district assets be determined in advance of the determination of the value of individual holdings in order that it may be known whether the bonded indebtedness of the district will be paid and discharged out of the liquida-

tion of the assets of the district instead of out of further assessments levied therefor or out of deductions from the amount to be paid by the United States to the landowners. That under the laws of the State of Washington every acre of land in the district is liable for assessment for the payment of the outstanding bonds of the district until such bonds are paid in full and that said bonds cannot be paid in full except out of the existing assets of the district or out of further assessments levied therefor or by being deducted by the United States from the amount to be paid for the individual's land.

Affiant further states that the power plant referred to herein, and other instrumentalities, facilities and property of the district are situated within the area or areas proposed to be taken by the United States under the various declarations for immediate possession.

M. M. MOULTON.

Subscribed and sworn to before me this 14th day of May, 1943.

[Seal]

FLOYCE SMITH,

Notary Public in and for the State of Washington,  
residing at Kennewick.

[Endorsed]: Filed May 15, 1943. [27]

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[Title of District Court and Cause.]

MOTION FOR ORDER ALLOWING STATE OF  
WASHINGTON TO INTERVENE

Comes now the State of Washington, acting by and through its attorney general and Jerome K.

Kuykendall and Harold A. Pebbles, his assistants, and respectfully moves for the entry of an order by this court allowing the State of Washington to intervene in the above entitled action and join in the pending motion of Priest Rapids Irrigation District establishing sequence of trial, upon the ground and for the reason that the state's claim and the main action have questions of law and fact in common and representation of the state's interest by existing parties may be inadequate and the state may be bound by a judgment in the action.

This motion is based upon the records and files herein and upon the affidavits of Ed Davis, as director of the Department of Conservation and Development of the State of Washington, and Harold A. Pebbles, assistant attorney general of and for said state, hereunto attached, now referred to and by such reference incorporated in and made an integral part hereof.

Dated this 28th day of May, 1943.

SMITH TROY,

The Attorney General,

JEROME K. KUYKENDALL,

Assistant Attorney General,

HAROLD A. PEBBLES,

Assistant Attorney General,

Attorneys for the State  
of Washington. [28]



[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION OF  
THE STATE OF WASHINGTON FOR AN  
ORDER ALLOWING SAID STATE TO  
INTERVENE

State of Washington,  
County of Thurston—ss.

Ed Davis, being first duly sworn, on oath deposes and says:

That he is the duly appointed, qualified and acting director of the Department of Conservation and Development of the State of Washington and as such director hereby makes this affidavit for and on behalf of said state in support of its motion for order allowing said state to intervene and join in the motion of the Priest Rapids Irrigation District to establish sequence of trial in connection with condemnation by the United States of certain lands in Benton County; that all of the facts herein stated are particularly within the knowledge of this affiant as custodian of certain documents and records of the state relative to the formation, existence and operation of the aforesaid Priest Rapids Irrigation District;

That the said irrigation district was regularly organized under Secs. 7417 et seq., Remington's Revised Statutes of Washington, as amended to date, now is in existence and operating as such district and owns valuable real and personal property consisting of a hydroelectric power plant, transmis-

sion lines, pumps, motors, canals, pipelines, materials, tools, and equipment for operating all thereof, and the right to divert water for purposes of said district; [29]

That as authorized by law, and acting under and by virtue of the aforesaid secs. 7417, et seq., Remington's Revised Statutes of Washington, the aforesaid Priest Rapids Irrigation District on July 1, 1940, issued its general obligation and power revenue bonds in a total amount of one hundred eighty-nine thousand and 00/100 dollars (\$189,000.00) of said bonds, such issue being of bonds numbered respectively 1 to 189, both numbers inclusive, and being each in the amount of one thousand and 00/100 dollars (\$1,000.00);

That thereafter all proceedings for organization of the district and authorizing the issuance of sale of aforesaid bonds were judicially examined, approved and confirmed by the Superior Court of the State of Washington for Benton County. Copy of decree of such confirmation is hereunto attached, marked Exhibit "A", now referred to and by such reference incorporated in and made an integral part hereof;

That the State of Washington, as holder in due course, purchased one hundred seventy-three thousand and 00/100 dollars (\$173,000.00) worth of said bonds and said state now owns and has in its possession one hundred sixty-five thousand and 00/100 dollars (\$165,000.00) worth of said bonds, the same being numbered respectively 17 to 62, 66 to 100, and 106 to 189, all numbers inclusive, each such bond

being in the principal amount of one thousand and 00/100 dollars (\$1,000.00) and bearing interest to date of maturity on January 1, 1947, or until sooner called for payment; that a true, correct and certified photostatic copy of one of said bonds, the same being numbered 52, is hereunto attached, marked Exhibit "B", now referred to and by such reference incorporated in and made an integral part hereof;

That under and by virtue of the provisions of secs. 7414, et seq., Remington's Revised Statutes of Washington, all of the aforesaid bonds of the State of Washington constitute a preferred lien [30] upon all water rights and other property of the Priest Rapids Irrigation District and upon its canals, ditches, flumes, feeders, storage reservoirs, machinery, other works and improvements, and also said bonds constitute a lien against all revenue of the district derived through assessment or otherwise;

That this affiant is informed, believes and therefore states the facts to be that the United States of America, purporting to act under Title 50, Sec. 171 and Sec. 632, The Second War Powers Act, and under Title 40, Sec. 257, et seq., both titles of U.S.C.A., is acquiring by purchase or by condemnation all land within Priest Rapids Irrigation District but that the United States is not by purchase of, by condemnation acquiring, nor does it intend to acquire, the lands and property, either real or personal, belonging to the said district itself; that the United States has taken the position, and is asserting in the above entitled action, that by its

acquisition of all other privately owned lands in the district it has thereby acquired the said district and all of its property, both real and personal;

That in addition to the foregoing, this affiant is informed, believes and therefore states the facts to be that the United States of America, purporting to act as aforesaid, is likewise acquiring at forced sale or by condemnation all or practically all of the land surrounding the Priest Rapids Irrigation District;

That if the United States of America does obtain all of the land within and surrounding the Priest Rapids Irrigation District it will thereby totally damage and totally destroy the market value of the entire system of the said district and all of its property; that likewise the aforesaid bonds of the State of Washington will become valueless and the state will thereby lose the sum of one hundred sixty-five thousand and 00/100 dollars (\$165,000.00) plus interest, solely as a result of the acts of the United States of [31] America;

That, further, if the United States of America takes all of the land within the Priest Rapids Irrigation District it will thereby destroy the lien of the district against such property for assessments made and to be made for payment of bonded indebtedness as aforesaid due the State of Washington;

That if the United States takes the property of the district it is necessary that the value of the assets thereof be determined in advance of any determination of value of the landowner in this case, or in any other case involving lands within the district, in order to determine whether the aforesaid

bonds of the State of Washington will be paid and discharged with the compensation for the taking by the United States if any such taking occurs, instead of out of further assessments levied therefor or out of deductions from the amounts to be paid various landowners within the district, including the above-named defendant; that under the laws of this state every acre of land is liable for assessment for payment of the aforesaid bonds until they are paid in full and said bonds cannot be paid in full except out of existing property and assets of the district or out of further assessments levied for such payment or by the same being deducted from the several amounts paid for lands within the district;

That the State of Washington has no other plain, speedy or adequate remedy in the premises and it will be irreparably damaged and injured if the United States is allowed to proceed without a separate trial of and a determination of just compensation for all property and assets of the Priest Rapids Irrigation District;

That an exemplified copy of the capacity and authority of this affiant to act as an officer of and for the State of Washington is hereunto attached, marked Exhibit "C", now referred to and by such reference incorporated in and made an integral part hereof.

ED DAVIS.

Subscribed and sworn to before me this 28th day of May, 1943.

[Notarial Seal] MARIE STROOK,  
Notary Public in and for the State of Washington,  
residing at Olympia, Wash. [33]



[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR  
ORDER ALLOWING STATE OF WASH-  
INGTON TO INTERVENE

State of Washington,  
County of Thurston—ss.

Harold A. Pebbles, being first duly sworn, on oath deposes and says:

That he is duly appointed, qualified and acting assistant attorney general of and for the State of Washington and makes this affidavit for and on its behalf in support of the motion of the state for entry of an order authorizing its intervention and joining with the Priest Rapids Irrigation District in a motion to establish sequence of trial;

That he has read the affidavit of Ed Davis, director of the Department of Conservation and Development of the State of Washington, in support of the state's said motion to intervene, hereunto attached and hereby refers to and incorporates herein such affidavit for all purposes;

That as shown by the aforesaid affidavit of Ed Davis, the State of Washington is a real party in interest and has interests in law and fact in common with the United States, the defendant Alberts, and with Priest Rapids Irrigation District in the pending motion to establish sequence of trial; that determination of the said motion last mentioned and any judgment entered in the above-entitled case, or any other case or cases involving land within [34]

the Priest Rapids Irrigation District, may adversely affect and become binding upon the State of Washington;

That any intervention allowed the State of Washington herein will neither hinder or delay this action nor prejudice the rights of any party thereto.

HAROLD A. PEBBLES.

Subscribed and sworn to before me this 28th day of May, 1943.

[Notarial Seal H. C. HIGGINS,  
Notary Public in and for the State of Washington,  
residing at Olympia, Wash. [35]

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EXHIBIT A

In the Superior Court of the State of Washington  
in and for Benton County

No. 6973

In the Matter of the Petition of B. Salvini, Wm. S. Webber and R. S. Reirson, Directors of Priest Rapids Irrigation District, praying that the proceedings for the issuance and sale of bonds of said District and the use of a portion of said bonds for refunding purposes, or the exchange of a portion of said bonds for outstanding bond, or the sale of a portion of said bonds for the payment of outstanding bonds authorized by a special election held on June 29, 1940, and other proceedings, be examined, approved and confirmed by the above entitled Court.

R. J. ROBERTS,

Answering Defendant.



## DECREE

The above entitled matter coming on for trial before the Court at the Court House in Prosser, Benton County, Washington, this 15th day of August, 1940, upon the petition of B. Salvini, Wm. S. Webber and R. S. Reirson, Directors of Priest Rapids Irrigation District, praying that certain proceedings and certain contracts and matters related thereto be examined, approved and confirmed by the Court, the petitioners appearing in person and by Moulton & Powell, their attorneys, and no appearance having been made or entered in any manner or form whatsoever by any interested person or parties, except R. J. Roberts appearing through his attorneys O'Brien & Salvini, by answer on his own behalf and on behalf of all other persons and parties similarly situated, and the Court having received the evidence offered by and on behalf of the petitioners and by and on behalf of the defendant, and being fully advised in the premises, and having made and entered Findings of Fact and Conclusions of Law;

Now, Therefore, It Is Considered, Adjudged and Decreed by the Court:

## I.

That the contract entered into between Priest Rapids Irrigation District and Pacific Power & Light Company, dated January 10, 1940, was properly and lawfully executed by the directors of Priest Rapids [36] Irrigation District, was properly and

regularly submitted to the voters at the election held on June 29, 1940, and was by the voters lawfully approved and ratified, and that said contract is now a legal and valid contract binding upon the parties thereto.

## II.

That the contract entered into between Priest Rapids Irrigation District and H. P. Pratt & Company, dated May 13th, 1940, copy of which is attached to the petition marked Petitioners' Exhibit "B", was regularly and lawfully executed by the parties thereto, is legal and valid in all particulars and is now a valid obligation binding upon the parties thereto.

## III.

That the Director of the Department of Conservation & Development of the State of Washington and the directors of Priest Rapids Irrigation District had full right, power and authority to enter into the contract dated June 8, 1940, copy of which contract is attached to the petition herein marked Exhibit "C"; that said contract was regularly and lawfully executed and is now a legal and valid contract binding upon the parties thereto.

## IV.

That the proceedings had by the Board of Directors of Priest Rapids Irrigation District in connection with the authorization and issuance of bonds in the amount of \$189,000.00, as described in the petition herein, including the resolution of the

Board requesting the consent of the Director to the refunding of bonds now held by the State of Washington and the calling of the special election held on the 29th day of June, 1940, the consent given by the Director thereto, the adoption of the resolution on the 8th day of June, 1940, calling the special election held on June 29, 1940, the giving of notice of said election, the holding of said election and the canvass of the returns thereof and declaration of the result, were regularly and lawfully had and conducted and that all acts performed by the Board in connection [37] therewith were regularly and lawfully performed, and that all acts required by law to be done and performed by the directors and the officers of Priest Rapids Irrigation District were done and performed as required and that all said proceedings were and are legal and valid.

## V.

That the question of issuing district bonds in the amount of \$189,000.00 in the manner appearing in Proposition No. 1, in words and figures as follows:

“Proposition No. 1:

Shall Priest Rapids Irrigation District issue its negotiable bonds in the principal amount of \$189,000.00 for betterment, repair, extension and refinancing purposes, of which proposed issue, bonds in an amount not to exceed \$100,000.00, may be sold to provide funds for the repair, betterment, improvement and extension of District's Power and Irrigation systems, the remaining bonds in the amount of \$89,000.00 to be used for the purpose of refunding the Dis-

trict's outstanding bonds in a like amount now held by the state of Washington, or to be exchanged for said outstanding bonds or to be sold for the purpose of providing funds for the payment thereof?

Bonds Yes [ ]

Bonds No [ ]

was regularly and lawfully submitted and voted upon and approved and satisfied and that the bonds of the district in said amount, to-wit, \$189,000.00 may be legally and lawfully sold to the amount of \$100,000.00, and that the remaining bonds in the amount of \$89,000 may be lawfully issued by the Board of Directors and used for the purpose of refunding outstanding bonds now held by the State of Washington in said amount of \$89,000.00, or said bonds may be exchanged by the district for bonds now held by the State of Washington in a like amount, or that said remaining bonds may be lawfully sold by the district for the purpose of providing funds for the payment of the bonds now held by the State of Washington, and that the Director of the Department of Conservation & Development has the right, power and authority to accept said remaining bonds in the amount of \$89,000.00 as refunding the bonds now held by the State of Washington or in exchange for said bonds, [38] notwithstanding the fact that as a result thereof the State of Washington will be holding bonds of the district in the amount of \$89,000.00 as a part of a larger issue than the issue now outstanding and held by the State of Washington.

## VI.

That notwithstanding that the reference to the contract with Pacific Power & Light Company dated January 10, 1940, was erroneous in that it referred to said contract as dated January 1, 1940, in the resolution calling said special election and in the proceedings in connection therewith and in the ballot, said contract was lawfully and legally ratified and approved by the voters at said special election.

## VII.

That the pledging of the revenues to be derived from the sale of surplus electrical energy by the district to the payment of any and all bonds issued pursuant to said special election was regularly and properly submitted to the voters at the special election held on the 29th day of June, 1940, and that said pledge of revenues was properly and lawfully ratified and approved by the voters at said special election, and that said revenues were and are by virtue of said election and the contracts entered into between Priest Rapids Irrigation District and H. P. Pratt & Company, dated May 13, 1940, and the contract entered into between the irrigation district and J. B. Fink, Director of the Department of Conservation & Development, dated June 8, 1940, legally and validly pledged to the payment of any and all bonds issued pursuant to the aforesaid election and that said pledging of revenues is valid and binding upon Priest Rapids Irrigation District.



## VIII.

That the question of cancelling bonds previously authorized but not issued, at an election on the 22nd day of October, 1938, and bonds authorized but not issued at an election held July 17, 1939, was regularly and lawfully submitted to the voters at said special election and that said bonds previously authorized but not issued were, as a result of said election, lawfully and validly cancelled, and that authority to issue bonds pursuant to said elections no longer exists. [39]

## IX.

That if pursuant to the aforesaid election Priest Rapids Irrigation District shall exchange a portion of the bonds authorized for bonds now held by the State of Washington, the directors may lawfully include in the bonds of said issue authorized to be exchanged for outstanding bonds a statement on the face thereof showing the amount of such issue so exchanged, and may include therein a certificate of the treasurer of the district as to the amount of bonds exchanged, and that the outstanding bonds have been surrendered and cancelled, notwithstanding the fact that such statement and certificate are not included in the form of bond set forth in the resolution authorizing the election, and that bonds including such statement and certificate, in the event of an exchange being made, will be valid and binding obligations of Priest Rapids Irrigation District.

## X.

That the Director of the Department of Conservation & Development, having in good faith exercised his discretion with respect to the acceptance of bonds of a larger issue than the issue now outstanding and held by the State in exchange for said bonds so held by the State, or by way of refunding said bonds, his act in agreeing to so accept said bonds of a larger issue is legal and valid.

## XI.

That Priest Rapids Irrigation District has power to refund its bonds now outstanding and held by the State of Wahsington, and, with the consent of the Director, had the right, power and authority to call and hold said special election for the purpose of authorizing and refunding of its outstanding bonds and that the Director of the Department of Conservation & Development has the right, power and authority to permit the refunding of the bonds now held by the State of Washington by accepting a portion of said bonds to the amount of \$89,000.00 out of the total issue of \$189,000.00, notwithstanding the fact that said bonds now held by the State of Washington, which it is proposed to refund, were issued subsequent to the enactment of Chapter 121, Laws of 1929.

## XII.

That notwithstanding the requirement in Section 2, Chapter 43, Laws of 1933, that "the proceeds of all bonds sold for cash must be paid by the purchaser



to the County Treasurer of the County in which the office of the board is located, and credited to the Bond Fund", the proceeds of the sale of any part of the issue of \$189,000.00 authorized by the election held on the 29th day of June, 1940, when received by the County Treasurer and credited to the bond fund of Priest Rapids Irrigation District will be available for the purpose for which said bonds are issued and sold and it will not be necessary that any part of said proceeds be held until refunding bonds accepted by the State of Washington, or bonds accepted by the State of Washington in exchange for bonds now held by the State have been paid.

It is further considered, adjudged and decreed by the Court that the notice of filing of the petition herein, including notice of this hearing has been duly given and published for the time and in the manner provided by law and by the order of the Court fixing a time and place for hearing; that all land owners in the district and all parties owning any interest in lands in the district have a common and general interest in the questions presented by the petition herein, are numerous and it is impracticable to bring them all before the Court, and the defendant R. J. Roberts, appearing generally is fairly representative of all other landowners and interested parties, and that the Court now has jurisdiction of the subject matter and of all parties appearing personally and by representation.

It is further considered, adjudged and decreed that the bonds authorized at said special election held on the 29th day of June, 1940, or any thereof,

when issued and sold or delivered to the State of Washington for the purpose of refunding the bonds now held by the State of Washington or exchanged for said bonds now held by the State of Washington, will be legal, valid and general obligations of Priest Rapids Irrigation District and [41] the lawful indebtedness thereof, payable out of and from revenue derived from annual assessments upon all of the real property within the irrigation district, levied and collected in the manner provided by the laws of the State of Washington, and that all the real property in the district shall be and remain liable to be assessed for such payments until fully paid; and the form of the bond set forth in the resolution is approved and confirmed, provided, however, that this approval of the form of the bond as set out in said proceedings shall not preclude the directors from modifying said form within the limitations imposed thereon by law.

It is further considered, adjudged and decreed that Priest Rapids Irrigation District has full power and authority to proceed with the sale of bonds as and for the purposes stated in the resolution calling the election and with the retirement of the bonds held by the State in any one of the three alternative methods provided in said resolution.

It is further considered, adjudged and decreed that the Court has full jurisdiction and power to examine and determine the powers of the Director of the Department of Conservation & Development, his right and power to enter into the contract with

Priest Rapids Irrigation District dated June 8, 1940, his right and power to accept district bonds of a larger issue in refunding the bonds now held by the State or in exchange for bonds now held by the State, and that the Court has jurisdiction and power to examine and adjudicate the legality and validity of said proposed bond issue in every particular and the legality and validity of the contracts between the district and the Pacific Power & Light Company, the district and H. P. Pratt & Company, and the district and J. B. Fink, Director of the Department of Conservation & Development, as well as and including the legality and validity of all proceedings and acts on the part of the board of directors and officers of the Priest Rapids Irrigation District and others that might in any manner or degree affect the legality and validity of said acts and proceedings and of the contracts and bonds and all other matters described in the petition filed herein. [42]

It is further considered, adjudged and decreed by the Court that the petition filed by the petitioners herein sets forth and alleges all the facts necessary to authorize and empower the Court to examine the proceedings referred to in said petition, to enter final judgment thereon and to fully and completely adjudicate all matters and all issues which this decree purports to adjudicate as against all parties appearing herein both personally and by representation.

It is further considered, adjudged and decreed by the Court that the directors of Priest Rapids

Irrigation District have power and authority to cause to be created and established in the Bond Redemption Fund an account to be designated "Surplus Balance", in which there shall be carried the revenues derived from the sale of surplus power, to be controlled as and in the manner set forth in the contracts between the irrigation district and J. B. Fink, Director, and H. P. Pratt & Company, and in the form of bond appearing in the resolution calling the election, and that the directors have power and authority to control and direct the application and use of revenues deposited in said "Surplus Balance" account, in accordance with the aforesaid contracts and bonds.

It is further considered, adjudged and decreed by the Court that the special election held on the 29th day of June, 1940, authorizing the issuance of bonds in the amount of \$189,000 was duly and regularly called and held; that all acts required by law to be done and performed by the Board of Directors in connection with the authorization of the issuance of said bonds, both before and subsequent to the holding of said election, and in connection with the holding of said election, have been done and performed in accordance with law; that all notices have been given in the manner and form and for the time required by law and that each and every act so performed is valid and binding upon the district and upon the real property therein, and each and all of said acts and things done and performed, and all proceedings of the board of directors in connection therewith, and all contracts described in the petition herein, and the form of bond

proposed to be issued, are hereby fully ratified, approved and confirmed and the legality and validity thereof are hereby established, and said contracts and the form of bond are hereby [43] adjudged to be legal and valid, and any and all bonds authorized at the special election held on June 29, 1940, that may be hereafter executed and issued pursuant to law, and the foregoing proceedings will be and constitute legal obligations of Priest Rapids Irrigation District, payable out of assessments levied therefor in the manner provided by law and payable out of the revenues derived from the sale of electrical energy.

By the Court this 15th day of August, 1940.

MATT L. DRISCOLL,

Judge.

Approved as to form:

O'BRIEN & SALVINI,

Attorneys for R. J. Roberts.

Filed for Record Aug. 15, 1940 and recorded in Vol. 20 of Sup. Court. Jr. pages 140, Etta J. Hillman, Clerk, Benton County, Office of County Clerk and Clerk of Superior Court.

In the Superior Court of the State of Washington  
For Benton County

No. 6973

In the Matter of the Petition of B. Salvini, Wm.  
S. Weber and R. S. Reiersen, Directors of  
Priest Rapids Irrigation District, Praying that



the Proceedings for the Issuance and Sale of Bonds of said District and the Use of a Portion of said Bonds for Refunding Purposes, or the Exchange of a Portion of said Bonds for Outstanding Bonds, or the Sale of a Portion of said Bonds for the Payment of Outstanding Bonds authorized by a Special Election held on June 29, 1940, and other Proceedings, be examined, approved and confirmed by the above entitled Court.

R. J. ROBERTS,  
Answering Defendant.

CERTIFICATE  
(Authenticated Copy)

I, Etta J. Hillman, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Decree, filed for record August 15, 1940, in the above entitled action, as the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 22nd day of May, 1943.

[Seal]

ETTA J. HILLMAN,  
Clerk.



State of Washington,  
County of Benton—ss.

I, Matt L. Driscoll, Judge of the Superior Court of the State of Washington, for Benton County, the same being a court of record, and having a clerk and seal, do hereby certify that Etta J. Hillman who has signed the foregoing instrument is the duly elected, qualified and acting Clerk of said Superior Court, that said Etta J. Hillman as such clerk is the sole custodian and keeper of the books, records, papers and seal of said Court.

That her signature to the annexed certificate is genuine, and that such certificate is in due form of law and by and proper officer.

Witness my hand and seal of said Superior Court at Prosser, Washington, this 22nd day of May, 1943.

MATT L. DRISCOLL,  
Judge.

State of Washington,  
County of Benton—ss.

I, Etta J. Hillman, County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Benton do hereby certify that Matt L. Driscoll, whose name subscribed to the above certificate is Matt L. Driscoll, judge of the Superior Court of the State of Washington for Benton County, and that the signature of said certificate is the genuine signature of Matt L. Driscoll, Superior Judge aforesaid.

In witness whereof, I have hereunto set my hand and seal of said Superior Court this 22nd day of May, 1943.

[Seal]                      ETTA J. HILLMAN,  
County Clerk and ex-officio Clerk of Superior  
Court of the State of Washington for Benton  
County.

### EXHIBIT "B"

#### Certificate

I, Ed Davis, the duly qualified, appointed and acting director of the Department of Conservation and Development of the State of Washington, do do hereby certify and affirm that the hereunto attached photostatic copy of Bond No. 52 in the amount of \$1,000.00, issued by Priest Rapids Irrigation District, is a true and correct photostatic copy of the original of such bond as the same exists and now is contained among the records and files in the office of the Department of Conservation and Development of the State of Washington.

Witness my hand and seal this 28th day of May, 1943.

ED DAVIS,  
Director, Department of Con-  
servation and Development  
of the State of Washington.

State of Washington,  
County of Thurston—ss.

This is to certify that on this 28th day of May, 1943, before me the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally came Ed Davis, to me known to be the individual and the director of the Department of Conservation and Development of the State of Washington, described in and who executed the within Certificate, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal, the day and year in this certificate first above written.

[Seal]                    MARIE STROCK,  
Notary Public in and for the State of Washington, residing at Olympia, Washington.

United States of America  
State of Washington

Priest Rapids Irrigation District, White Bluffs,  
Benton County, Washington. 2½ Per Cent  
General Obligation and Power Revenue Bond—  
First Issue, Series F. Due January 1, 1947.  
No. 52. \$1000.

Priest Rapids Irrigation District, which hereby declares itself to be an irrigation district duly created, organized and existing under the Act of the Legislature of the State of Washington entitled

“an act providing for the organization and government of Irrigation Districts and the sale of bonds, arising therefrom and declaring an emergency,” approved March 20, 1890, and the laws of said State amendatory thereof, and supplemental thereto, hereby acknowledges itself indebted to and for value received promises to pay to the bearer hereof, the sum of One Thousand Dollars lawful money of the United States of America, on the first day of January 1947, together with interest thereon at the rate of two and one-half percent per annum, payable semi-annually on the first day of January and July of each year according to the tenor of the interest coupons as they severally become due, at the office of the County Treasurer of Benton County, in the city of Prosser, State of Washington.

This bond is issued by and under the authority of and pursuant to and in full compliance with the above mentioned Act of the Legislature of the State of Washington and the acts of said legislature amendatory thereof and supplemental thereto, and under and pursuant to lawful votes of the electors of said Irrigation District cast at a special election held in said District on the 29th day of June, 1940, at which election a majority of the qualified electors of said district voted “Bonds, yes,” and the result of said election was duly so declared and entered of record. This bond is one of a total issue of one hundred eighty-nine thousand Dollars (\$189,000.00) issued by said District pursuant to said authority in eighteen series and numbered respectively according to the endorsements on the back thereof.

It is hereby certified, recited and warranted, that all acts, conditions and things required to be done exist and be performed precedent to and in the issuance of this bond have been done and performed and do exist in regular and due form and manner as required by law, and said bonds are declared to be the bonds of said District, a lawful indebtedness thereof, collectible by levy and assessment upon the real property in said District within the boundaries thereof as established by the County Commissioners of Benton County, Washington, by order duly entered of record, and to be payable out of the revenue derived from annual assessments and taxation upon said property levied and collected in the manner provided by the laws of the State of Washington, and for the further security of the payment thereof the following provisions has been made:

All income derived from the sale, delivery and distribution of electrical energy by Priest Rapids Irrigation District, has, by a favorable vote of the electors of the said District, at an election therein called, held and canvassed for that purpose, in the same manner as that provided by law for District Bond elections, been pledged in addition to income from District assessments to the payment of this issue of \$189,000.00 par value of bonds of said District, so long as any of said bonds remain outstanding. The Board of Directors of said District have deemed it advisable and have further provided that said income shall be deposited each month with



the County Treasurer of Benton County, State of Washington, and shall be apportioned in order of priority as follows:

First—The sum of \$500.00 per month in 1940 beginning with the month of September, and the sum of \$1250.00 per month beginning with the month of January, 1941, and continuing during the life of this issue of bonds, shall be apportioned to and sequestered in the Bond Redemption Fund, provided that it shall not be necessary for the Treasurer to so apportion and sequester said income so long as cash from any source shall be available in said Bond Redemption Fund (in excess of the “Surplus Balance” described below), for the full requirements of the next maturing interest and principal, including such requirements for the January 1st next succeeding, and provided further that if the gross income from the sale of electrical energy is insufficient in any month to make the apportionment and [47] sequestration above specified, then the amount of any deficiency shall be added to the amount required in the next month.

Second—An amount not in excess of \$500.00 per month shall be apportioned to such fund as shall be determined by the Directors to be expended for any lawful purpose of the district.

Third—One-half of any and all of said income in excess of requirements created by paragraphs designated “First” and “Second” above shall be apportioned to and sequestered in the Bond Re-



demption Fund as a "Surplus Balance" in excess of next maturing interest and principal up to and including the January 1st next succeeding until such "Surplus Balance" in said Bond Redemption Fund shall amount to \$15,000.00: provided that this Surplus Balance may in the future be reduced by District to not less than ten per cent of the authorized par value of the bonds of this issue remaining unpaid, when, as and if ten per cent thereof shall be less than \$15,000.00.

Fourth—The remainder of said income shall be credited by the Treasurer to any fund deemed advisable by the Directors, to be expended for any lawful purpose of the district.

Bonds of this issue numbered 52, 62, 73, 84, 95 and 106 and Bonds 107 to 189, both numbers inclusive, shall be callable at par plus accrued interest, in inverse numerical order, highest numbers first, and may be paid at the option of the district on any interest maturity date. All other bonds of this issue, except bonds numbered 1 to 42, both numbers inclusive, which are non-callable before maturity, shall be callable at par plus accrued interest in inverse numerical order, highest numbers first, and may be paid at the option of the district on January 1, 1946, and on any interest maturity date thereafter.

The lithographed and printed signature of the President and Secretary of the District upon the

coupons attached to this bond are hereby adopted as the signature of said officers and of said District.

Bonds in the amount of \$89,000.00 of this issue are being exchanged for bonds in a like amount heretofore outstanding and owned by the State of Washington.

In Witness Whereof, Priest Rapids Irrigation District has caused this bond to be executed in the name of the District, and signed by the President and Secretary, and its corporate seal, being also the seal of the Board of Directors of said District, to be hereunto affixed, and the coupons hereto attached to be signed by fac-simile signatures of the President and Secretary of the office of the Board of Directors of said District, at White Bluffs, Benton County, Washington, this first day of July 1940.

PRIEST RAPIDS IRRIGATION,  
DISTRICT,

By B. SALVINI,  
President.

Attest:

ETHEL M. REMLINGER,  
Secretary.

EXHIBIT C

United States of America, State of Washington,  
Department of State

Certificate No. 8119

To All to Whom These Presents Shall Come

I, Belle Reeves, Secretary of State of the State of Washington and custodian of the Seal of said State, do hereby certify that the records of this office show that on May 1, 1941, Arthur B. Langlie, Governor of the State of Washington, appointed Ed Davis as Director of the Department of Conservation and Development; and I further certify that Ed Davis is now and has been since May 1, 1941 the duly appointed, qualified and acting Director of the Department of Conservation and Development for the State of Washington.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Washington. Done at the Capitol, at Olympia, this 27th day of May, A. D., 1943.

[Seal]                      BELLE REEVES,  
Secretary of State.

[Endorsed]:    Filed May 29, 1943.

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division

No. 128

UNITED STATES OF AMERICA

Petitioner.

vs.

CLEMENTS P. ALBERTS,

Petitioner.

ORDER ALLOWING STATE OF  
WASHINGTON TO INTERVENE

This matter having come regularly on for hearing this day before the undersigned Judge of the above entitled court upon motion of the State of Washington for entry of an order herein authorizing said state to intervene in this action above entitled and join with Priest Rapids Irrigation District in its motion to establish sequence of trial, said motion having been supported by affidavits, which affidavits the court has read and considered, petitioner United States of America having been represented in open court at the time of such hearing by Edward J. Crowley and Bernard H. Ramsey, its attorneys, the state of Washington having been so represented by Jerome K. Kuykendall and Harold A. Pebbles, assistant attorneys general of and for said state,

Priest Rapids Irrigation District having been so represented by Moulton and Powell, its attorneys, and Charles Powell, of counsel, the court having listened to argument of such counsel and being satisfied in the premises, it is now therefore

Ordered and adjudged that the state of Washington be and it is hereby allowed to intervene in this action and join in the motion of Priest Rapids Irrigation District establishing sequence of trial.

Done in open court and dated this 29th day of May, 1943.

Presented by:

L. B. SCHWELLENBACH,

Judge

United States District Court

HAROLD A. PEEBLES,

Attorney for State of

Washington.

[Endorsed]: Filed May 29, 1943. [50]

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division

No. 128-43

UNITED STATES OF AMERICA,  
Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.,  
Defendants.

AMENDED PETITION FOR CONDEMNATION

as to Tracts: D-250, E-286, E-297, E-325, F-365,  
G-494, P-1291, P-1331, P-1336, R-1471, R1549,  
S-1611, S-1632, S-1647, S-1658.

Comes now the petitioner, the United States of  
America, by its undersigned attorneys, acting under  
and by direction of the Attorney General of the  
United States, and respectfully alleges as follows:

I.

That wherein so indicated the defendants named  
as husband and wife or wife and husband are and  
at all times material hereto have been such hus-  
band and wife or wife and husband; where defend-  
ants are herein named by fictitious names the true  
names of such defendants are unknown; the several  
corporations named as defendants herein are all  
duly organized and existing corporate entities ex-  
cept as otherwise indicated in the designation fol-  
lowing the name of each corporation.



## II.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918, (40 Stat. 518; 50 U.S.C. sec. 171) and March 27, 1942 (Public Law 507—77th Congress), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which act appropriated funds for such purposes, and the Act of Congress approved February 26, 1931 (40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof.

## III.

That the acquisition of said property is necessary adequately to provide for the establishment of a military reservation and for other military uses incident thereto. The property herein described has been selected by the Secretary of War for acquisition by the United States for use in connection with the establishment of the Hanford Engineer Works and for such other uses as may be authorized by Congress or by Executive order and the petitioner in good faith intends to use said property therefor.

## IV.

That certain of the tracts sought to be acquired in this proceeding and with respect to which the amended petition is filed are situate in the above entitled district and division and are described as follows: [53]

The full fee simple title thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and for existing irrigation ditches, canals, and laterals owned by the Priest Rapids Irrigation District in and to the following described lands, to wit:

## Tract No. D-250

Lots sixteen (16) and seventeen (17), Replat of Block sixty-nine (69), Hanford, according to plat thereof recorded in volume 2 of plats, page 32, records of Benton County, Washington, containing .18 acres, more or less.

## Tract No. E-286

The North half of the Southeast quarter of the Northeast quarter of the Southeast quarter of Section six (6), Township twelve (12) North, Range twenty-seven (27) East, W. M., containing 5.0 acres, more or less, in Benton County, Washington.

## Tract No. E-297

The South half of the Northwest quarter; and the Northwest quarter of the Southwest quarter; all in Section two (2), Township twelve (12) North,

Range twenty-seven (27) East, W. M., containing 120.0 acres, more or less, in Benton County, Washington.

Tract No. E-325

The Southwest quarter of the Southeast quarter of the Southwest quarter of Section nine (9), Township (12) North, Range twenty-seven (27) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

Tract No. F-365

The East half of the Northeast quarter of the Northeast quarter of Section seven (7), Township twelve (12) North, Range twenty-six (26) East, W. M., containing 20.0 acres, more or less, in Benton County, Washington.

Tract No. G-494

The Northeast quarter of the Southwest quarter of Section nine (9), Township thirteen (13) North, Range twenty-five (25) East, W. M., containing 40.0 acres, more or less, in Benton County, Washington.

Tract No. P-1291

Tract sixty-nine (69) and seventy-two (72), Columbia-White Bluffs Irrigated Orchards recorded in Volume 2 at Page 44, records of Benton County; also described as the West half of the Southeast quarter of the Northeast quarter, Section twenty-three (23), Township fourteen (14) North, Range twenty-six (26) East, W. M., containing 19.20 acres, more or less, in Benton County, Washington. [54]

## Tract No. P-1331

The Northeast quarter of the Northeast quarter of the Southwest quarter of Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

## Tract No. P-1336

The Southeast quarter of the Southwest quarter of the Southeast quarter of Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

## Tract No. R-1471

Lots five (5) to nine (9), inclusive, Block thirty-one (31), Bradshaw's Addition to White Bluffs Investment Co.'s Town of White Bluffs, according to plat thereof recorded in volume 2 of plats, page 90, records of Benton County, Washington, containing 0.85 acres, more or less.

## Tract No. R-1549

Lot twelve (12) and the Southeasterly 45 feet of lots thirteen (13) and fourteen (14) and all of lot fifteen (15), Block twenty-one (21), White Bluffs Investment Co.'s Town of White Bluffs, according to recorded plat thereof, in volume 2 at page 70, records of Benton County, Washington, containing .36 acres, more or less.

## Tract No. S-1611

The Southwest quarter of Government lot four (4), Section six (6), Township thirteen (13) North, Range twenty-seven (27) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

## Tract No. S-1632

Government lot two (2) in Section 10 (10), Township thirteen (13) North, Range twenty-seven (27) East, W. M., containing 28.70 acres, more or less, in Benton County, Washington.

## Tract No. S-1647

Tract three (3) and four (4), Plat of Hanford Irrigation and Power Co.'s Irrigated Lands in Section seven (7), Township thirteen (13) North, Range twenty-seven (27) East, W. M., according to plat recorded in volume 2 of plats, page 22 A in Auditor's office of Benton County, Washington, containing 20.0 acres, more or less.

## Tract No. S-1658

East half of the West half of the Southeast quarter of the Southeast quarter of Section seventeen (17), Township thirteen (13) North, Range twenty-seven (27) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington. [55]

For the purpose of setting forth a particular description of the property selected for acquisition and the names of each and every owner, encum-



brancer, tenant, or other person or party interested in the same or any part thereof, diligent search has been made of the public records of the State and County wherein said lands are located, said persons with respect to said tracts are as hereinafter set forth, to wit:

Tract No. D-250

E. Krentz, a bachelor

May Condon and John Doe Condon,  
wife and husband

A. W. Robinson and Jane Doe Robinson,  
husband and wife

Tract No. E-286

A. F. Brown, Trustee

D. L. Taylor and Jane Doe Taylor,  
husband and wife

K. C. Gifford and Clara Gifford,  
husband and wife

Elsie Lee Walters, widow

The Unknown Heirs of W. S. Walters, deceased  
Carl Moritz

Hazel Clement

Theodore A. Formhals

Clyde Formhals

Nelora Mabel Burke

State of Washington

Tract No. E-297

Carroll C. Burnett and Ivy Bell Burnett,  
husband and wife

Benton County, Washington



Tract No. E-325

C. V. Trevitt and Jane Doe Trevitt,  
his wife on April 27, 1920.

Benton County, Washington

Northern Pacific Railway Company,  
a corporation

Tract No. F-365

William Olson

The Unknown Heirs of Bertha Olson, deceased  
Northern Pacific Railway Company,  
a corporation

Benton County, Washington

State of Washington

Tract No. G-494

May H. Dean, individually and as administra-  
trix of the estate of Highland Z. Dean, de-  
ceased

The Unknown Heirs of Highland Z. Dean,  
deceased

Riverland Irrigation District, a corporation

Benton County, Washington

State of Washington [56]

Tract No. P-1291

B. F. Arnold and Dollie Arnold,  
husband and wife

Albert Moede and Ruby L. Meode,  
husband and wife

Pacific Power and Light Company,  
a corporation

Northern Pacific Railway Company,  
a corporation

Benton County, Washington

State of Washington

## Tract No. P-1331

Mary Nelson and John Doe Nelson,  
her husband on April 5, 1910  
Priest Rapids Irrigation District, a corporation  
Northern Pacific Railway Company,  
a corporation  
State of Washington

## Tract No. P-1336

C. I. Wright and Jane Doe Wright,  
husband and wife  
Priest Rapids Irrigation District, a corporation  
John Doe Gruenhagen, husband of Anna Lenz  
Gruenhagen on January 8, 1916  
Northern Pacific Railway Company,  
a corporation  
Benton County, Washington  
State of Washington

## Tract No. R-1471

L. E. Hamblet and Jane Doe Hamblet, his wife  
on August 8, 1928  
Northern Pacific Railway Company,  
a corporation

## Tract No. R-1549

Harry Keller  
The Unknown Heirs of Cora J. Keller, deceased  
James Shepherd and Jane Doe Shepherd,  
husband and wife  
L. C. Foisy and Jane Doe Foisy,  
husband and wife  
Northern Pacific Railway Company,  
a corporation  
State of Washington

Tract No. S-1611

Frank L. Hawley and Jane Doe Hawley,  
his wife on April 30, 1912  
Priest Rapids Irrigation District, a corporation  
State of Washington

Tract No. S-1632

Martin Paroz and Jane Doe Paroz,  
husband and wife  
Benton County, Washington

Tract No. S-1647

John Burch and Jane Doe Burch,  
husband and wife  
Priest Rapids Irrigation District, a corporation  
Northern Pacific Railway Company,  
a corporation  
State of Washington [57]

Tract No. S-1658

L. Boutin and Jane Doe Boutin,  
his wife on December 21, 1921  
Northern Pacific Railway Company,  
a corporation

In addition thereto, the petitioner joins as parties hereto the unknown heirs of the above named persons if deceased, and all other persons, parties, firms or corporations unknown having or claiming to have any right, title, estate, lien or interest in or to the land above described or any part thereto.

Wherefore, your petitioner prays:

1. That the purpose of this 'condemnation' be adjudicated to be a public use.

2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein prescribed, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation be determined thereby.

3. That the property hereinabove described be decreed to be the property of the United States.

4. That the court grant such other relief as shall seem proper in the premises.

BERNARD H. RAMSEY,  
Special Assistant to  
Attorney General

EDWARD J. CROWLEY,  
Special Attorney,  
Dept. of Justice

JAMES LEAVY,  
Special Attorney,  
Dept. of Justice

HOWARD T. TUSTIN,  
Special Attorney,  
Dept. of Justice

EDWARD M. CONNELLY,  
United States Attorney  
Attorneys for Petitioner

[Endorsed]: Filed Aug. 26, 1943.

AUTHORIZING AND DIRECTING DEC-  
LARATION OF TAKING NO. 99

May 4, 1944

The Honorable

The Attorney General,  
Washington, D. C.

Dear Mr. Attorney General:

Reference is made to the condemnation proceeding entitled United States of America vs. Clements P. Alberts, et al., No. 128, in the United States District Court for the Eastern District of Washington, for the acquisition of land in connection with the Hanford Engineer Works Project.

Pursuant to the provisions of the Act of Congress approved February 26, 1931, and the Acts of Congress recited in the petition filed in the above entitled proceeding, it is requested that you cause the inclosed declaration of taking No. 99 to be filed in said proceeding. The declaration of taking covers all the operating properties and facilities of the Priest Rapids Irrigation District as described more fully therein, and shows \$170,500.00 as the estimate compensation therefor. This compensation represents the outstanding indebtedness of the District. A detailed explanation of the necessity and advisability of filing the declaration of taking is contained in the letter to your Department dated March 25, 1944, from Leland L. Yost, Special Assistant to the Attorney General. The War Department has engaged certified public accountants of Yakima,

Washington, to audit the books of the Priest Rapids Irrigation District, which audit has not as yet been entirely completed. The matter has also been fully discussed with Mr. Bernard H. Ramsey, Special Assistant to the Attorney General, and from the best possible information available, it is recommended that \$170,500.00 be deposited with the filing of this declaration of taking. It is believed that this amount will be sufficient to pay all bonds and warrants of the District after deducting anticipated income from conditional sales contracts outstanding and cash which is now on hand in the bond redemption fund and in the funds of the District. The amount recommended for deposit also includes an estimate of interest on the bonds to approximately May 15, 1944. The check in the amount of \$170,500.00 payable to the order of the Clerk of the United States District Court for the Eastern District of Washington, is inclosed for deposit in the registry of the court.

This Department has been recently advised that unless the declaration of taking covering the Irrigation District's properties and facilities is filed before June 1, 1944, the court will entertain a motion to set aside all verdicts returned during this term of court and will permit in the future, the defendant in all cases to show the value of the District's properties and facilities. It is the recommendation of this Department that the declaration of Taking inclosed herewith, be filed immediately.

An appraisal report is not furnished on any of the lands and interests described in the declaration of



taking for the reason that under the acquisition policy established by this Department and approved by the Department of Justice, it is the position of the Government that upon the acquiring all of the land in the Priest Rapids Irrigation District, the Government becomes the owner of the Irrigation District subject only to the bonded indebtedness of the District itself and an appraisal is therefore unnecessary. Title evidence for Tract No. W-2004 described in the declaration of taking as Parcel PR-1, and Tract No. G-452 designated as Parcel PR-3, together with a master certificate of title for the Priest Rapids Irrigation District have been forwarded to Mr. Bernard H. Ramsey, Special Assistant to the Attorney General.

Four additional copies of said declaration of taking are inclosed.

Sincerely yours,

HENRY L. STIMSON,  
Secretary of War.

2 Incls: 1, Check; 2, D.T. (quint.).

Pursuant to T. 28, U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this department.

J. EDWARD WILLIAMS,

Acting Head,  
Lands Division, Department  
of Justice. [59]

[Seal]

[Title of District Court and Cause]

EXCERPTS

Yakima, Washington, October 12, 1943.

The Court: Well, go ahead and make your offer of proof.

Mr. Wiehl: It is agreeable with counsel, is it not, that Mr. Powell make his offer of proof pertaining to all the tracts involved, that are in the Priest Rapids Irrigation District?

Mr. Ramsey: The Government will stipulate that the offer of proof will apply to each of the three tracts located within the Priest Rapids Irrigation District, that is, the Shaw tract, the Wright tract and the Parke tract.

G. B. HALL

(Recalled)

having been previously sworn, testified as follows:

Mr. Powell: Should I merely file this or read it into the record, your Honor?

The Court: Oh, I see no reason,—let the record show that you have read it in and Mr. Moburg can copy it. I see no reason why you should go to the trouble of reading it.

Mr. Powell: All right, your Honor.

The Court: You copy it in, Mr. Moburg.

“Offer of Proof

“Priest Rapids Irrigation District

“As to tracts P 1336 (Wright), Q 1425 (Shaw), P 1274 (Parke), defendants, owners of the above-numbered tracts all of which are located within the Priest Rapids Irrigation District, offer to prove the following facts concerning said District.

1.

“That there are within the boundaries of said District, 15534.03 acres of land and of that total 3196.42 acres were in private ownership at the time of the filing of the first declaration of taking against privately owned lands within the District.

2.

“That during the *money* of April, 1943, the petitioner took possession of the District's pumping plant and distribution system and has since maintained and operated same and that on October 1, 1943, the petitioner took possession of the power plant of the District and is now either engaged in operating the same for its own purposes or has leased the same to the Pacific Power and Light Company. That the petitioner receives the revenue from the operation of the plant, the exact terms of the agreement between the petitioner and the Pacific Power and Light Company being unknown to the defendants. That no declaration of taking has been filed against the power plant or other properties [62] of the District and the title thereto is still in the District

## 3.

“That prior to the commencement of this action, the District had acquired certain lands by the foreclosure of delinquent assessments, a portion of which have been sold on contract and that all of said lands, including the value of its contracts of sale, were \$17,100.00.

## 4.

“That on October 1, 1943, the financial condition of the Priest Rapids Irrigation District was as shown by the statement of the County Treasurer of Benton County, Washington, a true and correct copy of which statement is attached to the original of this offer and is marked “Defendant’s Identification——.”

## 5.

“That the property of the Irrigation District, exclusive of lands acquired on the foreclosure of the assessments, consists of the following:

(a) One (1) small and three (3) large pumps installed on the bank of the Columbia River, by means of which water is pumped through discharge pipes into a main canal.

(b) A canal and distribution laterals consisting [63] small canals and pipe lines, by means of which water is made available to defendant’s land.

(c) 15.6 miles of 60,000 volt transmission lines for the transmission of electric energy.

(d) A power plant consisting of a wing dam for the diversion of water from the Columbia River, a power canal by which water is conducted through turbines for the generation of power, a concrete building in which the generating equipment is housed, two generators and complete generating machinery and equipment.

(e) Transformers, switching gear and all other miscellaneous equipment necessary in the operation of the power plant and transmission of energy to the irrigation works of the District.

6.

“That the Priest Rapids Irrigation District is the successor in interest of the Hanford Irrigation and Power Company, which originally acquired the right to divert water at Priest Rapids, and the right to construct a wing dam therefor and that a true and correct copy of the original permit to construct such dam and divert water is herewith offered in evidence and marked “Defendant’s Identification . . . . .” [64]

7.

“That there have been no sales whatsoever of Irrigation District instrumentalities as such or of power plants such as that owned and operated by the District, and, therefore, there are no sales of similar property which could be used to establish market value.

8.

“That during the irrigation season, from March 15th until October 15th in each year, energy ranging from 50 kilowatts to 1160 kilowatts is required for pumping water upon the lands irrigated by the District. That said power is transmitted from the power plant through the transmission line of the District to Coyote Rapids, a distance of 15.6 miles where the pumping station is located.

9.

“That all power generated in excess of the amount required for the pumping of irrigation water and the operation of the power plant is now sold to the Pacific Power & Light Company under contract at 1.75 mills per kilowatt hour, less 5% for line loss. That that contract extends until January 1, 1961. That in 1942 the sale of surplus power under said contract resulted in an operating revenue of \$14,258.07. That from January 1, 1943, to October 1, 1943, although only [65] one generator was in operation, the operating revenue received by the District under said contract was \$10,915.84.

10.

“That the operating revenue derived from the sale of surplus power is available to and is used by the District for a payment of interest on the bonded indebtedness and for the redemption of District bonds and toward the payment of the costs



and expenses of operating and maintaining the irrigation district facilities. That the properties of the District are valued as follows:

SUMMARY OF VALUATION BY FEATURES

Designation	Feature	Total Values
A	Power Canal.....	\$ 153,200
B	Generating Plant—Structures .....	149,900
C	Generating Plant—Equipment .....	121,500
D	Coyote Pumping Station—Structures.....	39,900
E	Coyote Pumping Station—Equipment ....	59,270
F	Transformers and Switches .....	30,700
G	Transmission Line.....	79,900
H	Main Irrigation Canal.....	74,000
I	Lateral System .....	9,700
J	Misc. Property .....	1,790
K	Future Development Expense .....	3,800
L	Water and Power Rights .....	307,025
Total.....		<hr/> \$1,030,685

11.

“That the District power plant has a maximum generating capacity of 2900 kilowatts and a safe generating capacity of 2700 kilowatts. That at and before the time for the filing of declaration of taking against lands in the Priest Rapids Irrigation District, it had \$16,346.61 available for further construction. That the district had planned, with the intention of immediately executing said plan, to increase the generating capacity of its power plant and to enlarge its irrigation distribution facilities. That thereby the District could increase the amount of electric energy generated at the power plant,

thereby realizing additional funds from the sale of surplus power and further, the area of irrigated lands within the District would be increased. That said plan further included the refinancing of the present indebtedness and the District had the assurance of private agencies that when materials are available \$600,000 would be loaned to said District for the purpose of refunding its present indebtedness and extending its facilities and increasing the capacity of its power plant. That one condition of the assurance [67] of the loan was that the power plant be increased to full generating capacity.

## 12.

“With an expenditure of approximately \$30,000, the generating capacity of the power plant can be increased to 22,847,832 kilowatt hours which would result in an increase in annual net revenue.

## 13.

“That the defendants further offer to prove that from experience of other power plants and from the experience of the District’s power plants by the expenditures of the additional sums, net operating revenue from said power plant may be increased as follows:

From operating records of Naches Drop Plant, 30 yrs. old, Powerdale Plant, 20 years old, and Prosser Plant, 11 years old, there was in 1941 and 1942

an average operation of 97.7% ; Maximum possible operation 8760 hours per year.....or..... 100.0%.

“In addition to the above time losses allowance must be made for general overhauls at 6 to 10 year intervals. These overhauls usually required 24 days or at 6 year intervals an average of 4 days per year which in percent is 1.1%.

“Deducting this overhaul time from the normal operating percentage, the anticipated annual average is 97.6%. [68]

“Maximum generation of the Priest Rapids plant has been 2900 kilowatts. This maximum safe capacity of the plant is 2700 kilowatts.

“Operating 96.6% of the maximum possible time at 2700 kilowatt capacity the plant would generate per year 22,847,832 kilowatt hours. Less 5% for transformation and transmission loss, 21,705,440 kilowatt hours.

“Under the terms of the sales contract, the company can limit the amount of energy they will receive to 2,400 kilowatts or in percentage of maximum safe capacity of the plant 88.9%.

“Using the contract limit and 95% operation instead of the 96.6% shown by actual operating records, the delivery per year to the company would be 19,973,000 kilowatt hours.

“Delivering this energy at 1.75 mills per kilowatt hour, less 5% for transmission and transformation losses, the annual return would be.....	\$ 33,205
Less operation and maintenance cost (Present \$6,700) Estimated .....	9,800
Net operating revenue.....	\$ 23,405
“The 1942 net operating revenue if all energy were sold (11,864,300 kilowatt hours at mills less 5%)..	\$ 19,724
Less estimated operation and maintenance costs .....	9,800
Net operating revenue.....	\$ 9,924
“Possible increase in net operating revenue (\$23,405 less \$9,924) .....	\$ 13,481
“Capitalizing this at 4% per annum the increased earnings represent a capital investment of.....	\$337,025
Less cost of canal enlargement and other improvements necessary to obtain maximum output .....	30,000
Intangible value is.....	\$307,025”

(End of offer of proof.)

Mr. Powell: We hereby offer to prove, if your Honor please, the matters contained in the written, in the written statement, which your Honor has, and all of them by the witness Hall, your Honor. And we feel that we will be able to establish the facts contained therein by this witness if he were permitted to testify to them. They pertain to the District and to the value of the properties of the District. We also in the offer, which will be in the record,—we further desire to offer two exhibits. One is a statement of financial condition of the District which shows the cash on hand, and the indebt-

edness, both warrant and bonds, and the other is a certified copy of the original permit to divert water and construct the wing dam at Priest Rapids.

The certified copy of that, however, is in the County Auditor's office and today is a holiday there and I was not able to get it this morning. I think counsel will agree I may offer it later.

Mr. Ramsey: The Government will stipulate that the offer shall be considered as made and that a certified copy may be marked as an exhibit and attached to the offer tomorrow or at some subsequent date during the progress of this trial.

The Court: Well, those two exhibits will be marked,——

Mr. Powell: In the offer I have referred to them as for Identification, your Honor.

(Discussion off the record.)

The Court: Yes, they will be marked for Identification, Parke-Wright and Shaw's Identifications 1, 2 and 3.

(Parke, Wright and Shaw's Identifications 1, 2 and 3 were marked for identification.)

The Court: Now, I think you ought to qualify Mr. Hall before you make your offer. [71]

Q. (By Mr. Powell): Mr. Hall, you live in Yakima? A. I do.

Q. How long have you lived in Yakima?

A. I have lived here for over 20 years.

Q. What is your business?

A. Engineer, Civil Engineer.

Q. Are you licensed by the State of Washington? A. Yes.



Q. Do you have other licenses?

A. Yes, sir, Idaho and Oregon.

Q. Your office is in the Larson Building here?

A. That is right.

Q. What work do you do?

A. For the past year and a half it has been principally War Department and Navy work and the water works and sewerage systems.

Q. You are engaged primarily in engineering on public utilities and water systems?

A. That is right.

Q. Have you been with the Reclamation Bureau?

A. Yes, I was with them for 5 years.

Q. And were you at one time employed by the Priest Rapids Irrigation District?

A. In 1938. [72]

Q. That is when your employment commenced?

A. Yes.

Q. And did you make studies and do engineering work for the District at that time?

A. Yes.

Q. And subsequently?

A. At intervals since.

Q. And when did you make a study of the facilities of the Priest Rapids Irrigation District?

A. Beginning in 1938 for a public works administration application,—for funds to rehabilitate the District.

Q. And did you make a complete examination of the facilities of the District this year?

A. Yes, I did.



Q. And you at that time arrived at certain cost figures and reproduction figures in order to place an evaluation upon the facilities of the District?

A. Yes.

Q. And you are prepared to testify concerning that valuation?           A. I am.

Q. You are familiar with the offer of proof that we are prepared to make here?           A. I am.

Q. And you are familiar with all the matters contained in [73] it and the facts stated in it?

A. Right.

Mr. Powell: We offer to prove the matters contained in the written order, your Honor, which we understand to be a part of the record.

The Court: Now is it stipulated that the properties involved, tracts P 1336, Q 1425 and P 1274 are in the Priest Rapids Irrigation District?

Mr. Ramsey: It is so stipulated by the Government.

The Court: And that the assessments due to the District have been paid to such a time that there is no forfeiture of any rights that the owners thereof would have in the event of the liquidation of the District under the State statute to their proportionate share in the value of the assets?

Mr. Ramsey: Provided that at the time of the liquidation of the District the present owners were still owners of lands within the District.

The Court: Well, I mean as of the date of taking, that they were such.

Mr. Ramsey: Yes, with the further reservation that the assets of the District would first be subject

to the payment of all outstanding indebtedness of the District before the land owners would be entitled to share [74] any cost of dissolution.

The Court: Well, that is under the State law,—that necessarily would follow. But you are raising no question about the fact that this land, or these owners were on the date of taking qualified to participate if such a participation resulted from the dissolution of the District?

Mr. Ramsey: I will so stipulate.

The Court: Go ahead and make your objection.

Mr. Ramsey: The offer of proof, and all of the offer of proof and the offer as to the exhibits are objected to as being wholly incompetent, irrelevant and immaterial for the reason that the value of the assets of the District and the lands are fully reflected in the appraisal of those lands as irrigated tracts.

For the further reason that there is no property interest in the assets of the District as to the lands or the owners of the lands until such time as the District has been dissolved under the provisions of the laws of the State of Washington, and that at the time of the taking there was no dissolution of the District and for the further reason that at the time of the taking any equitable right of the lands or the owners in the facilities of the District passed with the title itself and that the Government in taking the full fee [75] simple title to the property acquired any equitable interest which either the lands taken or the owners of the lands taken as of that date may have had.

The Court: The objection is sustained. The offer is refused and the offer of the exhibits, Parke, Wright and Shaw's Identifications numbers 1, 2 and 3 are refused.

Mr. Powell: Now if your Honor please,—

The Court: I would like to make a statement for the record.

As I indicated the other day with reference to a similar offer concerning the Richland district in which the District property was involved, I am convinced that in so far as this land is land which is dependent upon the district for its water and compensation is sought by the owner upon the basis of the value of the land as irrigated land or as potential irrigated land, and the jury is asked to take into consideration the fact that water is being furnished or can be furnished by the district, that there is no doubt in my mind, that the owner is not entitled in this proceeding to compensation to the extent of his pro rata share of the assets of the district after liquidation, this for the reason that such compensation would constitute double compensation. If the owners are asking for compensation on the [76] basis of irrigated land, the only time at which they would be entitled to participate in the assets of the district would be upon the liquidation of the district. If the district was liquidated, necessarily it would not be furnishing water and they can't take compensation as irrigated land and at the same time take it as non-irrigated land, non-irrigated because of the abandonment of the irrigation facilities by the district.

As to the Shaw tract, there is some testimony concerning the fact that there was a well on the property. I don't know whether the testimony will reveal whether or not it would be the contention of Mr. Shaw that the supply of water from the well is ample to irrigate the land without any dependence upon the district for water. I am informed that the testimony in the Parke case will be that they have a well which can supply ample water and they have no need for the water of the district.

It seems to me that a different problem is presented where the owner of the property is not depending upon the district for his water and is claiming the value of irrigated land on the basis of water privately supplied. There, there would not be such double compensation, and it is my personal opinion that in those instances the parties are entitled to recover not only [77] for the value of their land as irrigated land but also to recover for their pro rata share of the value of the assets of the district. However, in the meeting which was in the nature of a pre-trial conference, and which would have been considered a pre-trial conference had the Federal rules of procedure applied to condemnation proceedings, counsel on both sides represented to me that the cost of submitting complete testimony as to the value of the assets of the district would be a considerable amount for the Government on the one hand and the land owner on the other; that it would involve a protracted trial which would result in a long and expensive record to be taken to the Circuit Court of Appeals, and I am glad to co-

operate with Counsel on both sides and the parties on both sides in getting this record in such shape that the Court of Appeals can pass upon the question without putting the respective parties to the expense, first, of the preparation for a trial, second, in the trial itself, and third, for the taking to the Appellate Court of a long and expensive record. I am hopeful that in this case we have presented to us all of the various problems arising out of the state statute which gives to the owner of a land in a liquidated irrigation district the right to his pro rata share and that the Court of Appeals will view sympathetically [78] the proposition of taking them all up and giving us the answers to the various problems which are presented. I want the record in this case to show that there are a number of dozens of other cases involving the same problem and that this is not simply a matter of certifying something up to the Appellate Court because of the fact that we don't want to handle it here, but it seems to me to be the practical manner of handling it in order to avoid an exceedingly large amount of expense to everybody involved in all of these cases. Do you have something further?

\* \* \*

I, Bruce Moburg, do hereby certify that at the time the case of United States of America, Petitioner, vs. Clements P. Alberts, et al., Defendants, No. 128 in the District Court of the United States, for the Eastern District, Southern Division, was tried in said Court, I was official court reporter for said Court, in said District and Division, and that



the foregoing pages, numbered from 1 to 20 inclusive, are a true and correct excerpt from transcript of proceedings of said case upon October 12, 1943, at Yakima, Washington, commencing on line 21, page 420 and ending at line 15, page 435, both inclusive, of said transcript.

BRUCE MOBURG

[Endorsed]: Filed July 19, 1947.

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[Title of District Court and Cause.]

## TRANSCRIPT OF PROCEEDINGS

on April 26, 1944

Before the Hon. L. B. Schwellenbach, Judge, at Yakima, Washington, beginning at the hour of 10:00 o'clock a.m., April 24, 1944; B. H. Ramsey, Chester Thomas and Frank B. Reid, Special Attorneys for the Lands Division of the office of the Attorney General, appearing as attorneys for the plaintiff; Moulton & Powell (by Charles L. Powell) appearing as attorneys for defendants Chalcraft.

During the trial of said cause, and at the hour of 10:00 o'clock a.m., April 26, 1944, in the Court's chambers, in the absence of the jury, the following proceedings were had, to-wit:

Mr. Powell: If Your Honor please, we desire to make an offer of proof in connection with the present case, as follows: We desire to prove as a part of the defendants' cases, pertaining to each of the tracts, the value of the irrigation



district's works, water rights and properties, as well as the cash in bank and obligations, as reflecting a value in the land of each of the property owners involved in these cases.

We further feel that this offer is in order now, particularly in view of the fact that counsel in the action tried in October made the statement that the Department was filing a declaration of taking against [81] the Richland Irrigation District and the Priest Rapids Irrigation District, within, I believe, thirty days thereafter, and the declaration of taking has not been filed.

Mr. Ramsey: That is objected to on the ground that the water rights of the district are appurtenant to the lands being acquired by the Government in these proceedings; that the instrumentalities of the District are impressed with a trust in favor of the lands, and that the value of the water rights and the value of the instrumentalities is fully reflected in the values placed upon the lands by both the Government witnesses and the defendants' witnesses.

With reference to the filing of the declaration of taking upon the instrumentalities of the District, I do not remember that any specific time limit was given by me at the time in October that the statement was made to the Court that declarations of taking would be filed for the acquisition of the District's instrumentalities. If such a time limit was set it was merely an estimate upon my part, but I want to reiterate that

it is the purpose of the Government to file such declaration of taking; that as a matter of fact the declarations of taking covering the properties of the District were cleared through the Project Office of the Army Engineers more than sixty days ago, and are at this time in the hands of the War Department to be forwarded through the Department of Justice for filing, and the reason for the delay has to do with the acquisition of certain other privately owned [82] properties in the District; that I have been assured that every effort will be made to expedite the filing of these declarations of taking, and the deposit in court of a sufficient fund to care for the obligations of the District.

The Court: I will sustain the objection to the offer of proof, but in connection with this ruling I wish to say this: First, the ruling is not based upon any deficiency in the offer of proof. While the detailed offer has not been given, I am familiar with the position which the defendants take, and in one of the earlier trials in October a detailed statement of the testimony was made, and I am passing on this offer of proof upon the theory that if a detailed offer was made it would be the same as made at the previous trial.

The background of this situation is this. Shortly after the commencement of these actions, in May, 1943, as I remember it, the motion was made by Mr. Powell concerning this question of the right of the property owners to have adjudicated in these proceedings and in-

cluded in any judgment a prorata share that each property owner might be entitled to in the event of a dissolution of the Irrigation District.

The Government resisted that effort on the part of the property owners, asserting it intended to acquire all of the property within the District, as a result of which it would then become the owner of the facilities and instrumentalities of the District.

This presented an entirely new proposition of law. Neither counsel nor the Court were able to find any [83] authorities directly assisting in the effort to find the correct answer to the problem. At my suggestion it was agreed that in the first case that was to be tried the offer of proof would be made, and that I would deny the offer, and that not only the counsel directly involved in the case, but the Attorney General's office would attempt to expedite an appeal so we could have a decision on this question by the Circuit Court of Appeals prior to the trying of any more of the actions involving any of the other lands within the District.

This was agreed upon, but at the conclusion of the first trial in October that procedure was abandoned. The abandonment was in part due to the statement by counsel for the Government that the Government would proceed expeditiously with the filing of the declarations of taking on the properties of the Irrigation District.

As Mr. Ramsey has said, no definite time was fixed, but it certainly was agreed that the Gov-

ernment would proceed with expedition, and the period of expedition has long passed. It is now six months since that statement was made.

I freely absolve Mr. Ramsey and the Lands Division of any culpability in the matter. That, however, does not satisfactorily meet the situation.

The Court has no power to force the Attorney General's office or the War Department to file declarations of taking. However, I am denying this motion with the statement that if at the conclusion of this hearing, [84] in which the just compensation for some six tracts is being determined, if the property owners file a motion for a new trial, I will consider this offer of proof in reference to the motion for a new trial, and I am now giving notice to the Government that before any other cases are tried either the declaration of taking must be filed, or the next time any trials ensue I intend to permit the property owners to prove the value of their proportionate share in the Irrigation District, and it will be necessary for the Government by early June, which will be the date of the next trial, to be ready to present its testimony as to the value of the Irrigation District, and I intend from now on to permit the property owners to submit such testimony and submit that issue to the jury.

As I have said in previous cases, I appreciate the difficulties with which the War Department are confronted, but that does not justify this

delay. The original order for possession was granted on February 23, 1943. That is a little more than fourteen months ago.

The Government and the War Department have a greater responsibility to our citizens than would justify them pleading the necessities of the War in attempting to explain this fourteen-months delay in this portion of the proceedings.

While I can understand their desire to acquire title to all the property within the District before filing declarations of taking, as to the assets of the District, there is nothing so difficult about describing [85] the assets of the District as would enable them to use this length of time and excuse it.

(The trial of the causes was then resumed in open court before the jury.)

State of Washington  
County of King—ss.

I, the undersigned, do hereby certify that as the court reporter I did attend and did report in shorthand all the evidence and proceedings had upon the trial of the cause first hereinbefore entitled, held at Yakima, Washington, beginning at the hour of 10:00 o'clock a.m., April 24, 1944.

I do further certify that the foregoing five pages, and lines from 1 to 4, inclusive, on this page, are a full, true and correct transcript of the proceedings had in said cause, in Court's chambers, as set forth on page one of this transcript.



Witness my hand at Seattle, Washington, this 23d day of June, 1947.

EAGAN RIDENOUR,  
Court Reporter.

[Endorsed]: Filed July 19, 1947.

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In the District Court of the United States for the  
Eastern District of Washington, Southern Division

No. 128-99

UNITED STATES OF AMERICA

Petitioner,

vs.

CLEMENTS P. ALBERTS

PRIEST RAPIDS IRRIGATION DISTRICT,  
et al.

Defendants. [87]

AMENDED PETITION FOR CONDEMNATION

As to Parcel PR-1, Tract No. W-2004, Parcel PR-2, Parcel PR-3, Tract No. G-452, Parcel PR-4, Parcel PR-5.

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and respectively alleges as follows:

I.

That wherein so indicated the defendants named as husband and wife or wife and husband are and



at all times material hereto have been such husband and wife or wife and husband; where defendants are herein named by fictitious names, the true names of such defendants are unknown; the several corporations named as defendants herein are all duly organized and existing corporate entities except as otherwise indicated in the designation following the name of each corporation.

## II.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171) and March 27, 1942 (Public Law 507—77th Congress), which Acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which Act appropriated funds for such purposes, and the Act of Congress approved February 26, 1931, (40 U.S.C. 258a) and Acts supplementary thereto and amendatory thereof. [88]

## III.

That the acquisition of said property is necessary adequately to provide for the establishment of a military reservation and for other military uses incident thereto. The property herein described has

been selected by the Secretary of War for acquisition by the United States for use in connection with the establishment of the Hanford Engineer Works and for such other uses as may be authorized by Congress or by Executive order and the petitioner in good faith intends to use said property therefor.

#### IV.

That certain of the tracts sought to be acquired in this proceeding and with respect to which the amended petition is filed are situate in the above entitled district and division and are described as follows:

- (1) The fee simple title to the lands described as Parcel PR1, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company.
- (2) The existing rights and/or easements of the Priest Rapids Irrigation District to construct, operate, maintain and patrol an electric power transmission line and appurtenances in, over, upon and across the land described as Parcel PR-2.
- (3) The fee simple title to the lands described as Parcel PR-3, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines.

- (4) The fee simple absolute title to the property described as Parcel PR-4.
- (5) All right, title or interest of the Priest Rapids Irrigation District in and to the lands described as Parcel PR-5, said lands situate in Benton and Yakima Counties, Washington and more particularly described as follows: [89]

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is 986½ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

## Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

## Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for

the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

### Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North, Range 23 East, W.M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sec-



tions 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land herein-after described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

#### Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

#### Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.



## Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals, pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6,

Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is  $986\frac{1}{2}$  feet West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

#### V.

For the purpose of setting forth a particular description of the property selected for acquisition and the names of each and every owner, encumbrancer, tenant or other person or party interested in the same or any part thereof, diligent search has been made of the public records of the state and county wherein said lands are located. Said persons with respect to said tracts are as hereinafter set forth, to-wit:

Parcel PR-1: Tract No. W-2004

Priest Rapids Irrigation District, a municipal corporation of the State of Washington  
State of Washington, a sovereign state

Northern Pacific Railway Company, a Wisconsin corporation

Bankers Trust Company, a corporation, successor to Mercantile Trust Company, a corporation

City Bank & Farmers Trust Company, a corporation, successors to Farmers' Loan and Trust Company, a corporation

Harry A. Scandrett, Walter J. Cummings and George I. Haight, as Trustees of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation

Chemical Bank & Trust Company, successor by merger to United States Mortgage and Trust Company, a New York corporation; and Howard B. Smith, successor to Calvert Brewer, as Trustees

Guaranty Trust Company of New York, a New York corporation, and Arthur E. Burke, as Trustees

The National City Bank of New York, a national banking association, and William M. Hoffman, as Trustees

Selah Consolidated School District No. 119 of Yakima County, Washington (successor by consolidation to Selah School District No. 116; successor by consolidation to Pleasant Valley School District No. 84; successor to School District No. 97 by annexation)

#### Parcel PR-2

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state

Parcel PR-3: Tract No. G-452

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state [93]

Parcel PR-4

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state

Parcel PR-5

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state

In addition thereto petitioner joins as parties hereto all other persons, parties, firms or corporations unknown having or claiming to have any right, title, estate, lien or interest in or to the land above described or any portion thereof. [94]

VI.

That the real property and interests therein described in paragraph IV hereof constitute all of the operating properties and facilities owned of record or claimed by the Priest Rapids Irrigation District, a municipal corporation of the State of Washington. That petitioner, United States of America, by reason of its ownership of all the real property lying within the boundaries of said Priest Rapids Irrigation District is in truth and in fact the equitable owner of the real property and interests therein described in paragraph IV hereof, subject only to the lien of the bonded indebtedness of said Priest Rapids Irrigation District, and said



Priest Rapids Irrigation District, a municipal corporation of the State of Washington, now holds legal title thereto in trust for the use and benefit of petitioner, United States of America. That the sum of \$170,500.00 deposited in the registry of this court with the filing of declaration of taking, No. 99 herein represents a sum which together with the bond redemption fund of said Priest Rapids Irrigation District is sufficient to pay and discharge all bonded indebtedness of said Priest Rapids Irrigation District. [95]

Wherefore, your petitioner prays:

1. That the purpose of this condemnation be adjudicated to be a public use.
2. That the payments to be made from the sum heretofore deposited in the registry of this court be ascertained and determined by the court and that the parties entitled to receive such payments be determined thereby.
3. That the property hereinabove described be decreed to be the property of the United States.
4. That the court grant such other relief as shall seem proper in the premises.

BERNARD H. RAMSEY

Special Assistant to  
The Attorney General

DAN P. McLOUGHLIN

Special Attorney  
Department of Justice

EDWARD M. CONNELLY

United States Attorney  
Attorneys for Petitioner



State of Washington,  
County of Yakima—ss.

Dan P. McLoughlin, being first duly sworn, upon oath deposes and says: That he is a duly appointed, qualified, and acting Special Attorney for the Department of Justice, and as such makes this verification; that he has read the foregoing petition for condemnation, knows the contents thereof and that the same is true, to the best of his knowledge, information and belief.

DAN P. McLOUGHLIN

Subscribed and sworn to before me this 12th day of May, 1944.

[Seal]

M. C. DELLE,  
Notary Public in and for the State of Washington,  
residing at Yakima.

[Endorsed]: Filed May 12, 1944.

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[Title of District Court and Cause]

DECLARATION OF TAKING NO. 99

To the Honorable, the United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further au-

thority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171) and March 277, 1942 (Public Law 507 - 77th Congress), which acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved July 2, 1942 (Public Law 649 - 77th Congress), which act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the establishment of a military reservation and for other military uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Hanford Engineer Works and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of part of the same lands described in the petition in the above entitled cause. [98]

3. The estate taken for said public uses is:

- (1) The fee simple title to the lands described as Parcel PR-1, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject

to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company.

- (2) The existing rights and/or easements of the Priest Rapids Irrigation District to construct, operate, maintain and patrol an electric power transmission line and appurtenances in, over, upon and across the land described as Parcel PR-2.
- (3) The fee simple title to the lands described as Parcel PR-3, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines.
- (4) The fee simple absolute title to the property described as Parcel PR-4.
- (5) All right, title or interest of the Priest Rapids Irrigation District in and to the lands described as Parcel PR-5.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said lands, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name [99] by said Henry L. Stimson, Secretary of War, this is the 4th day of May, A. D. 1944, in the City of Washington, District of Columbia.

HENRY L. STIMSON,

Secretary of War of the United States.

Schedule "A"

The land which is the subject matter of this Declaration of Taking is situate in the Counties of Benton and Yakima, State of Washington. A description of the lands taken, together with the names of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is 986½ feet West of the quarter section corner on the North boundary of said section; thence East along said North bound-

ary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by



deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

#### Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:



That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North, Range 23 East, W.M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26)

East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

#### Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

#### Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals, pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W.M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28

East, W. M.; to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W.M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shore lands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W.M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is  $986\frac{1}{2}$  feet West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the

Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

Name of Purported Owner of Parcel PR-1 to Parcel PR-5, inclusive: Priest Rapids Irrigation District, a Washington corporation.

Address of Purported Owner: Hanford, Washington.

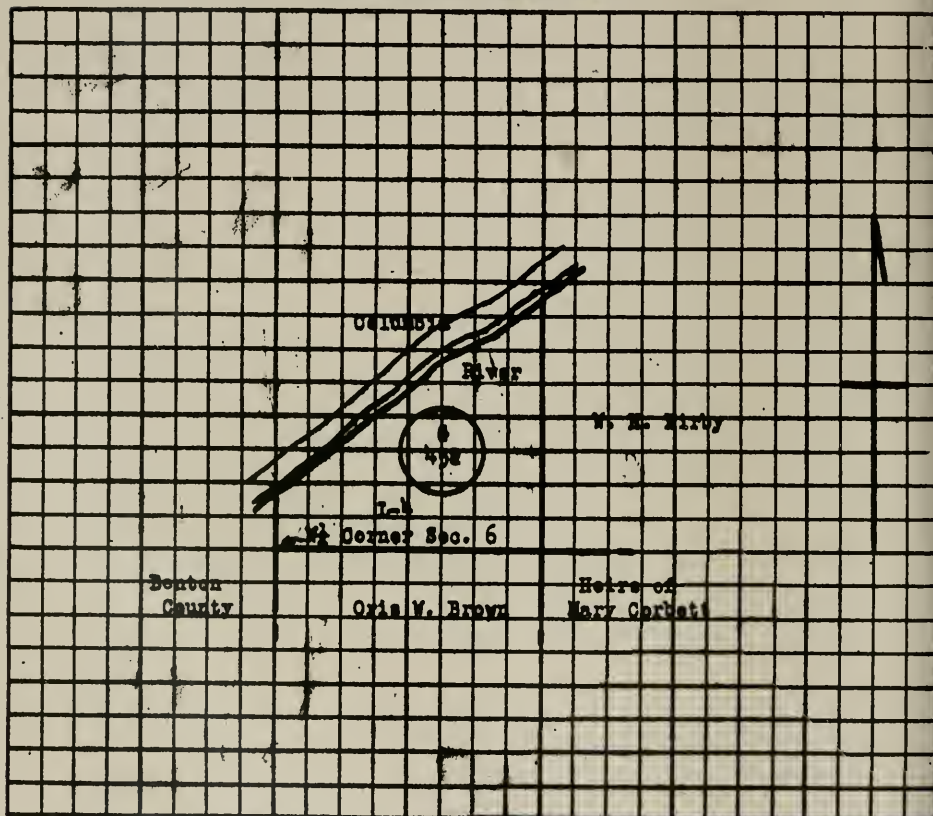
Estimated Compensation: One Hundred Seventy thousand five hundred and no/100 dollars (\$170,500.00).

The gross sum estimated as just compensation for the lands hereby taken is one hundred seventy thousand five hundred and no/100 dollars (\$170,500.00). [104]



CR FORM 29  
(4-15-43)WAR DEPARTMENT  
Office Division Engineer  
Pacific Division  
Real Estate BranchProject Hanford Engineer  
Works  
Tract G-452TRACT MAP (WITH GRID)

Name of Owner Priest Rapids Irrigation District  
 Description of tract: State Washington County Benton  
Lot 4, Section 6, Township 13 North, Range 26 E. W. M.  
TOGETHER with second class shore lands adjoining.  
 (Scale: 3 inches equals 1 mile)



## CLASSES OF LAND

Crop land ☐  
 Pasture land ☐  
 Forest land ☐  
☐

Grades of each class of land must  
 be shown on the map proper.

\* Name of any other class of land  
 involved.

SCHEDULE "B"

I certify that this is an accurate map of Tract G-452  
 based on Title Certificate, which  
 shows this tract to contain 16.72 acres, more or less.  
 Name Henry T. Holler  
 Title ASSIST. ENGR.  
 Date 9/4/43  
 Indicate whether map is based on General Land Office  
 records, aerial survey, deed description or actual survey.



CR Form 30  
(4-15-43)

WAR DEPARTMENT  
Office Division Engineer  
Pacific Division  
Real Estate Branch

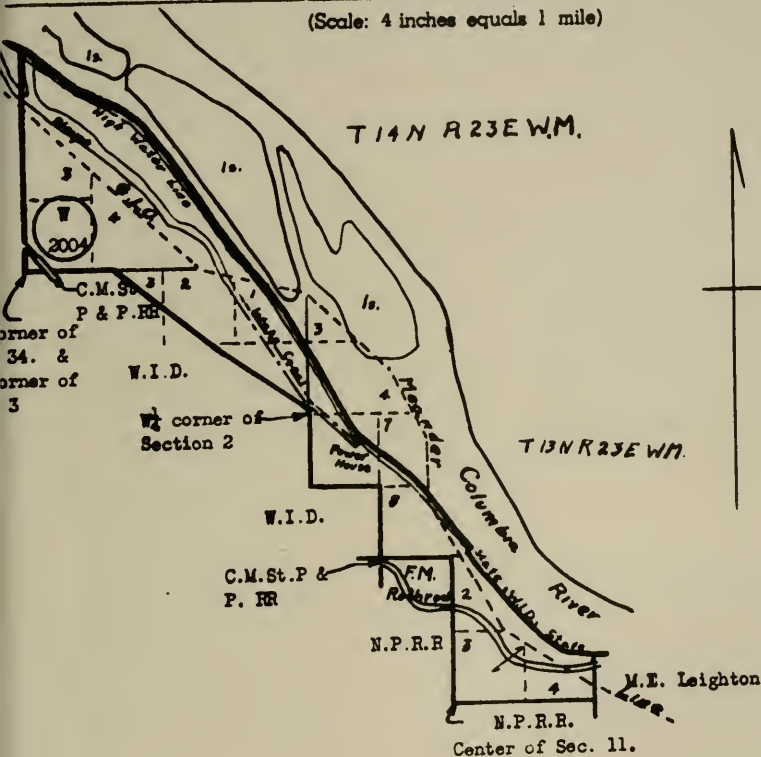
Project Hanford Eng. Wks.

Tract W-2004

TRACT MAP (WITHOUT GRID)

Name of owner Priest Rapids Irrigation District  
Description of tract: State Washington County Yakima  
See attached sheet.

(Scale: 4 inches equals 1 mile)



CLASSES OF LAND

Crop land ☐  
Pasture land ☐  
Forest land ☐  
• ☐

The grades of each class of land must be shown on the map proper.  
\* Name of any other class of land involved.

Schedule "B"

I certify that this is an accurate map of Tract W-2004  
based on Title Certificate

(aerial survey) (deed description) (actual survey)  
which shows this tract to contain 506.50 acres, more  
or less, and I further certify that the above described land is  
substantially the same land as that described in a deed from

to \_\_\_\_\_ dated \_\_\_\_\_  
and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_  
in the \_\_\_\_\_ County Records.  
Harry T. Hallas Asst. Engineer. 12-16-43  
(Name) (Title) (Date)



Description to Tract W-2004, County of Yakima,  
State of Washington.

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is  $986\frac{1}{2}$  feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwau-

kee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

[Endorsed]: Filed May 12, 1944.

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division

No. 128-99

UNITED STATES OF AMERICA,  
Petitioner.

vs.

CLEMENTS P. ALBERTS, PRIEST RAPIDS  
IRRIGATION DISTRICT, et al.,  
Defendants.

ORDER ON DECLARATION OF TAKING

As to Parcel PR-1, Tract No. W-2004, Parcel  
PR-2, Parcel PR-3, Tract No. G-452, Parcel  
PR-4, Parcel PR-5.

This matter came on regularly this day for an  
ex parte hearing up the motion of the United States  
of America appearing through its attorneys of  
record.

It appearing to the court that a petition for con-  
demnation was filed herein on February 23, 1943,  
and an amended petition for condemnation was filed  
herein on April 22, 1943 covering the premises here-  
inafter described and that an order was entered on  
February 23, 1943 and a further order was entered  
on April 22, 1943, granting to the petitioner the  
right of immediate possession of said premises pur-  
suant to the provisions of the Second War Powers

Act of 1942 (Public Law No. 507—77th Congress) approved March 27, 1942; that a declaration of taking has since been filed, signed by the authority empowered by law to acquire the lands described in the petition for condemnation, declaring that said lands were thereby taken for the use of the United States; that said declaration of taking contains a statement of the authority under which, and the public use for which, said lands were taken; a description of the lands taken sufficient for the identification thereof; a statement of the estate or interest in said lands taken for said public use; a plan showing the lands taken; and a statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken. Said declaration of taking further includes a statement that in the opinion of the chief of the executive department or agency empowered to acquire the land, the ultimate award probably will be within any limits prescribed by Congress on the price to be paid. [109]

It further appeared that simultaneously with the filing of said declaration of taking, to-wit: on May 12, 1944, pursuant to the Act of Congress of February 26, 1931, (46 Stat., 1421), Chapter 307, there was deposited in the registry of the court, to the use of the persons entitled thereto, the amount of the estimated compensation stated in said declaration of taking, to-wit: One hundred seventy thousand five hundred and no/100 dollars (\$170,500.00).

It further appearing that pursuant to said orders granting the right of immediate possession entered herein on February 23, 1943 and April 22, 1943, pos-



session was taken by the petitioner of the following described property, to-wit:

- (1) The fee simple title to the lands described as Parcel PR-1, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company.
- (2) The existing rights and/or easements of the Priest Rapids Irrigation District to construct, operate, maintain and patrol an electric power transmission line and appurtenances in, over, upon and across the land described as Parcel PR-2.
- (3) The fee simple title to the lands described as Parcel PR-3, subject, however, to existing easements for public road and highways, for public utilities, for railroads and for pipe lines.
- (4) The fee simple absolute title to the property described as Parcel PR-4.
- (5) All right, title or interest of the Priest Rapids Irrigation District in and to the lands described as Parcel PR-5, said lands situate in Benton and Yakima Counties, Washington, and more particularly described as follows:

## Parcel PR-1—Tract No. W-2004

## Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is  $986\frac{1}{2}$  feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

## Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

## Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

## Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North, Range 23 East, W. M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1,

Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

#### Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

#### Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

#### Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals, pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly



right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is  $986\frac{1}{2}$  feet West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the



Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418,

under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

Now, Therefore, It Is Hereby Ordered that possession of the above described property be and the same is hereby confirmed, and that notice of the entry of this order be given on or before May 20, 1944, to record owners of said premises by depositing certified copies thereof in the United States registered mail in envelopes addressed to each such persons; provided, that when the persons so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient. Included with such notices shall be a statement of the amount of compensation deposited as to the tract or tracts owned by such record owner.

It Is Further Ordered that taxes, levies and assessments due on the property herein described shall bear no interest from and after May 12, 1944, the date of filing the declaration of taking herein and the deposit of estimated just compensation in court.

Dated this 15th day of May, 1944.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

FRANK B. REID,  
Special Attorney of the Department of Justice.

Filed May 15, 1944. [114]

[Title of District Court and Cause.]

APPEARANCE OF PRIEST RAPIDS  
IRRIGATION DISTRICT

To the United States of America, Petitioner, and  
to Edward M. Connelly, Harvey Erickson and  
Edward J. Crowley, its attorneys:

You and each of you will please take notice that  
the undersigned attorneys hereby enter their ap-  
pearance in the above action for the defendants  
below named and all further pleadings, except pro-  
cess, are to be served on said attorneys at their  
address below stated.

MOULTON & POWELL,  
Attorneys for Defendant  
Priest Rapids Irrigation  
District.

Copy received August 18th, 1944.

FRANK B. REID,  
Of Attorneys for Petitioner

Filed Aug. 19, 1944.

In the District Court of the United States, for the  
Eastern District of Washington, Southern Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants,

STATE OF WASHINGTON, PRIEST RAPIDS  
IRRIGATION DISTRICT, a corporation,  
Stipulating Defendants.

### STIPULATION FIXING COMPENSATION FOR BONDS

The undersigned stipulating defendants appearing generally and waiving notice of service, and the petitioner, the United States of America, appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States of America, by authority and under the direction of the Attorney General of the United States of America,

Do hereby Stipulate and agree that the sum of One Hundred Sixty One Thousand Six Hundred Fifty and no/100 Dollars (\$161,650.00) shall forthwith be paid to and accepted by the State of Wash-

ington in full satisfaction, settlement and payment of all of the bonds the Priest Rapids Irrigation District, a corporation, now held or owned by the State of Washington or any of its departments, which bonds consist of eighty-nine (89) two and one-half per cent ( $2\frac{1}{2}\%$ ) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, and sixty-eight (68) five per cent (5%) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, together with all interest thereon. [116]

It is further stipulated and agreed that the said sum of One Hundred Sixty One Thousand Six Hundred Fifty and no/100 Dollars (\$161,650.00) shall be in full settlement of any and all claims of whatsoever nature the State of Washington may have by virtue of its ownership of said bonds and in full satisfaction of any and all claims that the State of Washington has against any of the lands of or within the boundaries of the Priest Rapids Irrigation District, a corporation, by virtue of its ownership of the bonds of said district.

It is further stipulated and agreed that an order be entered in this action ordering and directing the State of Washington to forthwith deliver to the Clerk of the above entitled Court all of said bonds, and that said order further specify that the Clerk of the above entitled Court be directed and empowered upon receipt of said bonds to immediately disburse the said sum of One Hundred Sixty One Thousand Six Hundred Fifty and no/100

Dollars (\$161,650.00) as aforesaid to the State of Washington out of the funds now on deposit in this action.

It is stipulated and agreed, however, that by the signing of this stipulation the defendant, Priest Rapids Irrigation District, a corporation, does so without prejudice to its right to contest the amount of the deposit or the right to additional compensation for the taking of the lands, water rights and facilities described in this action.

UNITED STATES OF AMERICA,  
By BERNARD H. RAMSEY,  
Special Assistant to the Attorney  
General.

STATE OF WASHINGTON,  
By SMITH TROY,  
Attorney General.

By HAROLD PEBBLES,  
Assistant Attorney General.

PRIEST RAPIDS IRRIGATION  
DISTRICT, a corporation,  
By R. S. REIERSON,  
Secretary.

CHARLES L. POWELL,  
Attorney for Priest Rapids Irriga-  
tion District, a corporation.

Filed Aug. 19, 1944 [117]



[Title of District Court and Cause.]

JUDGEMENT ORDERING PAYMENT  
OF BONDS

This cause coming on for hearing this day upon stipulation of the United States of America, the State of Washington and Priest Rapids Irrigation District, a corporation, stipulating defendants herein; wherein it is stipulated and agreed that the stipulating defendant State of Washington is the owner and holder of 89 2½% Bonds and 68 5% Bonds of the said Priest Rapids Irrigation District, a corporation, of the par value of \$1000.00 each, and that the payment to the State of Washington of the sum of One Hundred Sixty-One Thousand Six Hundred Fifty and No/100 Dollars (\$161,650.00) by the United States of America, petitioner herein, shall be in full and complete payment and satisfaction of all of said Bonds, together with all of the interest due or to become due thereon, and of the indebtedness evidenced therefrom, and of any and all claims of the State of Washington by reason of its ownership of said Bonds; and

It further appearing from said stipulation that, upon delivery of all said bonds to the Clerk of the Court, the sum of One Hundred Sixty-One Thousand Six Hundred Fifty and No/100 Dollars (\$161,650.00) shall forthwith be paid to the State of Washington out of the funds heretofore deposited in the registry of the Clerk of this court by petitioner in this docket; and

It further appearing from said stipulation that the defendant Priest Rapids Irrigation District, a corporation, joined in said stipulation solely for the [118] purpose of agreeing to the payment of said Bonds and the correctness of the amount due thereon, without prejudice to any right it may otherwise have to contest the amount of just compensation to be paid for the taking of the lands and facilities described in the Amended Petition on file in this action, and the Court being fully advised;

It is ordered, adjudged and decreed that the defendant State of Washington shall forthwith deliver to the Clerk of this Court all of said Bonds held by it in the Priest Rapids Irrigation District; and

It is further ordered, adjudged and decreed: that upon the receipt of said Bonds the Clerk of this court is hereby ordered and directed to pay to the State of Washington, care of Smith Troy, Attorney General of the State of Washington, at Olympia, Washington, the sum of One Hundred Sixty-One Thousand Six Hundred Fifty and no/100 Dollars (\$161,650.00) from the sum on deposit in Docket 128-99; and

It is further ordered, adjudged and decreed: That upon final payment therefor, said Bonds be, and they are, hereby ordered cancelled, and the Clerk of this court is hereby ordered and directed to mark each and every one of said Bonds with the word "Paid" upon the *fact* thereof by *performance* or other plainly legible means, and inform the Treasurer of Benton County, Washington, as ex-officio

Treasurer of the defendant Priest Rapids Irrigation District, a corporation, of such action, and that the records of said County Treasurer be made to conform to such cancellation;

It is further ordered, adjudged and decreed that the Court retain jurisdiction of this proceeding for the purpose of making such further orders, judgments and decrees as may be necessary.

Dated this 19 day of August, 1944.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

FRANK B. REID,  
Special Attorney,  
Department of Justice.

Filed August 19, 1944. [119]

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[Title of District Court and Cause.]

## STIPULATION FIXING COMPENSATION FOR BONDS

The undersigned stipulating defendants appearing generally and waiving notice of service, and the petitioner, the United States of America, appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States of America, by authority and under the direction of the Attorney General of the United States of America,

Do hereby stipulate and agree that the sum of Five Thousand One Hundred Twenty Five and no/100 Dollars (\$5,125.00) shall forthwith be paid to and accepted by the Fireman's Relief and Pension Fund Board of Bellingham, Washington, in full satisfaction, settlement and payment of all of the bonds the Priest Rapids Irrigation District, a corporation, now held or owned by the Fireman's Relief and Pension Fund Board of Bellingham, Washington, which bonds consist of five (5) five per cent (5%) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, together with all interest thereon. [120]

It is further stipulated and agreed that the said sum of Five Thousand One Hundred Twenty Five and no/100 Dollars (\$5,125.00) shall be in full settlement of any and all claims of whatsoever nature the Fireman's Relief and Pension Fund Board of Bellingham, Washington, may have by virtue of its ownership of said bonds and in full satisfaction of any and all claims that the Fireman's Relief and Pension Fund Board of Bellingham, Washington, has against any of the lands of or within the boundaries of the Priest Rapids Irrigation District, a corporation, by virtue of its ownership of the bonds of said district.

It is further stipulated and agreed that an order be entered in this action ordering and directing the Fireman's Relief and Pension Fund Board of Bellingham, Washington, to forthwith deliver to the Clerk of the above entitled Court all of said bonds, and that said order further specify that the

Clerk of the above entitled Court be directed and empowered upon receipt of said bonds to immediately disburse the said sum of Five Thousand One Hundred Twenty Five and no/100 Dollars (\$5,-125.00) as aforesaid to the Fireman's Relief and Pension Fund Board of Bellingham, Washington, out of the funds now on deposit in this action.

It is stipulated and agreed, however, that by the signing of this stipulation the defendant, Priest Rapids Irrigation District, a corporation, does so without prejudice to its right to contest the amount of the deposit or the right to additional compensation for the taking of the lands, water rights, and facilities described in this action.

UNITED STATES OF AMERICA,  
By BERNARD H. RAMSEY,  
Special Assistant to The Attorney  
General.

[Seal]

FIREMAN'S RELIEF AND PEN-  
SION FUND BOARD of Belling-  
ham, Washington.

By JACK MULHERN,  
City Comptroller.  
PRIEST RAPIDS IRRIGATION  
DISTRICT, a corporation  
By R. S. REIERSON,  
Secretary.

State of Washington,  
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, on oath deposes and says: That he is the Secretary of the defendant, Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and that he has been duly authorized by proper resolution of said corporation, adopted on the 6th day of Sept. 1944, to execute the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; that he has read the foregoing instrument, and that the statements contained therein are true, and he verily believes, and further that the seal affixed thereto is the corporate seal of said corporation.

[Seal] R. S. REIERSON,

Subscribed and sworn to before me this 8th day of Sept., 1944.

[Seal] JUNE FOWLES,

Notary Public in and for the State of Washington, residing at Olympia. My commission expires Jan. 6, 1945.



State of Washington,  
County of .....—ss.

Jack Mulhern, being first duly sworn, on oath deposes and says: That he is the duly qualified and acting City Comptroller of the City of Bellingham, Washington, a political sub-division of the State of Washington, and as such is duly authorized to execute the foregoing petition for and on behalf of the Fireman's Relief and Pension Fund Board of Bellingham, Washington, that he has read the foregoing petition, knows the contents thereof, and that the statements therein contained are true and correct.

JACK MULHERN.

Subscribed and sworn to before me this 29th day of Aug., 1944.

[Seal] JOSEPH PEMBERTON,  
Notary Public in and for the State of Washington, residing at.....

My commission expires Jan. 23, 1947.

Filed Sept. 19, 1944. [123]

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[Title of District Court and Cause.]

JUDGMENT ORDERING PAYMENT  
OF BONDS

This cause coming on for hearing this day upon stipulation of the United States of America, the Fireman's Relief and Pension Fund Board of Bellingham, Washington, and Priest Rapids Irrigation

District, a corporation, stipulating defendants herein, wherein it is stipulated and agreed that the stipulating defendant, Fireman's Relief and Pension Fund Board of Bellingham, Washington, is the owner and holder of five (5) per cent (5%) bonds of the said Priest Rapids Irrigation District, a corporation, of the par value of One Thousand and No/100 Dollars (\$1000.00) each and that the payment to the Fireman's Relief and Pension Fund Board of Bellingham, Washington, of the sum of Five Thousand One Hundred Twenty Five and No/100 Dollars (\$5,125.00) by the United States of America, petitioner herein, shall be in full and complete payment and satisfaction of all of said bonds together with all of the interest due or become due thereon and of the indebtedness evidenced therefrom and of any and all claims of the Fireman's Relief and Pension Fund Board of Bellingham, Washington, by reason of its ownership of said bonds; and

It further appearing from said stipulation that upon delivery of all said bonds to the Clerk of the Court that the sum of Five Thousand One Hundred Twenty-Five and No/100 Dollars (\$5,125.00) shall forthwith be paid to the [124] Fireman's Relief and Pension Fund Board of Bellingham, Washington, out of the funds heretofore deposited in the registry of the Clerk of this Court by petitioner in this Docket; and

It further appearing from said stipulation that the defendant, Priest Rapids Irrigation District, a corporation, joined in said stipulation solely for

the purpose of agreeing to the payment of said bonds and correctness of the amount due thereon, without prejudice to any right it may otherwise have to contest the amount of just compensation to be paid for the taking of the lands and facilities described in the Amended-Complaint on file in this action, and the Court being fully advised;

It is ordered, adjudged and decreed that the defendant, Fireman's Relief and Pension Fund Board of Bellingham, Washington, shall forthwith deliver to the Clerk of this Court all of said bonds held by it in the Priest Rapids Irrigation District; and

It is further ordered, adjudged and decreed that upon the receipt of said bonds the Clerk of this Court is hereby ordered and directed to pay to the Fireman's Relief and Pension Fund Board of Bellingham, Washington, c/o Jack Mulhern, City Comptroller, Bellingham, Washington, the sum of Five Thousand One Hundred Twenty-Five and No/100 Dollars (\$5,125.00) from the sum on deposit in Docket 128-99; and

It is further ordered, adjudged and decreed that upon final payment therefor, said bonds be, and they are hereby ordered cancelled, and the Clerk of this Court is hereby ordered and directed to mark each and every one of said bonds with the word "paid" upon the face thereof by perforation or other plainly legible means, and inform the Treasurer of Benton County, Washington, as ex-officio Treasurer of the defendant, Priest Rapids Irrigation District, a corporation, of such action and that the records of said county Treasurer *by* made to conform to such cancellation; and

It is further ordered, adjudged and decreed that the Court retain jurisdiction of this proceeding for the purposes of making such further orders, judgments, and decrees as may be necessary.

Dated this 19 day of September, 1944.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

RAYMOND G. BROWN,  
Special Attorney, Department  
of Justice.

Filed September 19, 1944. [125]

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In the District Court of the United States, for the  
Eastern District of Washington, Southern Di-  
vision

No. 128-99

UNITED STATES OF AMERICA,  
Petitioner,  
vs.

CLEMENTS P. ALBERTS, et al.,  
Defendants,

EMILY CORBETT,  
PRIEST RAPIDS IRRIGATION  
DISTRICT, a corporation,  
Stipulating Defendants.

STIPULATION FIXING COMPENSATION  
FOR BONDS

The Undersigned stipulating defendants appearing generally and waiving notice of service, and the petitioner, the United States of America, appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States of America, by authority and under the direction of the Attorney General of the United States of America,

Do hereby stipulate and agree that the sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) shall forthwith be paid to and accepted by the defendant, Emily Corbett, in full satisfaction, settlement and payment of all of the bonds the Priest Rapids Irrigation District, a corporation, now held or owned by Emily Corbett, which bonds consist of three (3) five per cent (5%) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, together with all interest thereon.

It is further stipulated and agreed that the said sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) shall be in full settlement of any and all claims of whatsoever nature the defendant, Emily Corbett, may have by virtue of her ownership of said bonds and in full satisfaction of any and all claims the defendant, [126] Emily Corbett, has against any of the lands of or within the boundaries of the Priest Rapids Irrigation District, a corporation, by virtue of its ownership of the bonds of said district.

It is further stipulated and agreed that an order be entered in this action ordering and directing the defendant, Emily Corbett, to forthwith deliver to the Clerk of the above entitled Court all of said bonds, and that said order further specify that the Clerk of the above entitled Court be directed and empowered upon the receipt of said bonds to immediately disburse the said sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) as aforesaid to Emily Corbett out of the funds now on deposit in this action.

It is stipulated and agreed, however, that by the signing of this stipulation the defendant, Priest Rapids Irrigation District, a corporation, does so without prejudice to its right to contest the amount of the deposit or the right to additional compensation for the taking of the lands, water rights and facilities described in this action.

UNITED STATES OF AMERICA

By BERNARD H. RAMSEY,

Special Assistant to The Attorney

[Seal]

General.

/s/ EMILY CORBETT

PRIEST RAPIDS IRRIGATION  
DISTRICT, a corporation.

By R. S. REIERSON,

Secretary.



State of Washington,  
County of Yakima—ss.

Emily Corbett, being first duly sworn, on oath deposes and says: That she is the defendant above named; that she has read the foregoing stipulation, knows the contents thereof, and that the statements therein contained are true and correct.

/s/ EMILY CORBETT,

Subscribed and sworn to before me this 23 day of Sept., 1944.

[Seal] LIONEL PUGMIRE,

Notary Public in and for the State of Washington, residing at Yakima. My commission expires March 8, 1948.

State of Washington,  
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, on oath deposes and says: That he is the Secretary of the defendant, Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and that he has been duly authorized by proper resolution of said corporation, adopted on the 6th day of Sept., 1944, to execute the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; that he has read the foregoing instrument, and that the statements contained therein are true, as he verily believes, and further, that the seal affixed thereto is the corporate seal of said corporation.

[Seal] R. S. REIERSON.

Subscribed and sworn to before me this 8th day of Sept., 1944.

[Seal] JUNE FOWLES,

Notary Public in and for the State of Washington, residing at Olympia. My Commission expires Jan. 6, 1945.

Filed Sept. 29, 1944. [129]

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[Title of District Court and Cause.]

### JUDGMENT ORDERING PAYMENT OF BONDS

This cause coming on for hearing this day upon stipulation of the United States of America, Emily Corbett and Priest Rapids Irrigation District, a corporation, stipulating defendants herein; wherein it is stipulated and agreed that the stipulating defendant, Emily Corbett, is the owner and holder of three (3) five per cent (5%) bonds of the said Priest Rapids Irrigation District, a corporation, of the par value of One Thousand and no/100 Dollars (\$1000.00) each and that the payment to Emily Corbett of the sum of Three Thousand Seventy Five (\$3,075.00) by the United States of America, petitioner herein, shall be in full and complete payment and satisfaction of all of said bonds together with all of the interest due or to become due thereon and of the indebtedness videdenced therefrom and of any and all claims of Emily Corbett by reason of her ownership of said bonds; and

It further appearing from said stipulation that upon delivery of all said bonds to the Clerk of the Court that the sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) shall forthwith be paid to Emily Corbett out of the funds heretofore deposited in the registry of the Clerk of this Court by petitioner [130] in this Docket; and

It further appearing from said stipulation that the defendant, Priest Rapids Irrigation District, a corporation, joined in said stipulation solely for the purpose of agreeing to the payment of said bonds and the correctness of the amount due thereon, without prejudice to any right it may otherwise have to contest the amount of just compensation to be paid for the taking of the lands and facilities described in the Amended-Complaint on file in this action, and the Court being fully advised;

It is ordered, adjudged and decreed that the defendant, Emily Corbett, shall forthwith deliver to the Clerk of this Court all of said bonds held by it in the Priest Rapids Irrigation District; and

It is further ordered, adjudged and decreed that upon the receipt of said bonds the Clerk of this Court is hereby ordered and directed to pay to the defendant, Emily Corbett, 2401 West Yakima Avenue, Yakima, Washington, the sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) from the sum on deposit in Docket 128-99; and

It is further ordered, adjudged and decreed that upon final payment therefor, said bonds, be and they are hereby ordered cancelled, and the Clerk of this

Court is hereby and ordered and directed to mark each and every one of said bonds with the word "paid" upon the face thereof by perforation or other plainly legible means, and inform the Treasurer of Benton County, Washington, as ex-officio Treasurer of the defendant, Priest Rapids Irrigation District, a corporation, of such action and that the records of said County Treasurer be made to conform to such cancellation; and

It is further ordered, adjudged and decreed that the Court [131] retain jurisdiction of this proceeding for the purposes of making such further orders, judgment, and decrees as may be necessary.

Dated this 29 day of September, 1944.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

RAYMOND G. BROWN,  
Special Attorney,  
Department of Justice.

Filed Sept. 29, 1944. [132]

In the District Court of the United States for  
the Eastern District of Washington, Southern  
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERT, and PRIEST RAPIDS  
IRRIGATION DISTRICT, a municipal cor-  
poration of the State of Washington, et al.,  
Defendants.

ANSWER TO AMENDED PETITION FOR  
CONDEMNATION AND PETITION FOR  
PAYMENT OF COMPENSATION

Comes now the Priest Rapids Irrigation District,  
a municipal corporation, and answering the  
amended petition for condemnation as to Parcel Tr.  
1 to Parcel Tr. 5, inclusive, Admits, denies and  
alleges as follows:

I.

Answering Paragraph III of said petition, this  
defendant denies the same, and the whole thereof.

II.

Answering Paragraph IV of said amended peti-  
tion, this defendant denies the same, and the whole  
thereof.

## III.

Answering Paragraph V of said petition, this defendant admits the same.

## IV.

Answering Paragraph VI of said petition, this defendant denies the same, and the whole thereof, and by reference incorporates herein and makes a part hereof the petition hereinafter set forth and the whole thereof.

And for further answer and by way of cross complaint, and petition for payment of compensation and distribution thereof Priest Rapids Irrigation District, a corporation, one of the defendants herein, alleges: [133]

## I.

The Priest Rapids Irrigation District is and at all times herein mentioned was a Washington corporation, organized and existing under and pursuant to the laws of the State of Washington, particularly the Act of March 20, 1890, entitled "An Act providing for the organization and the governing of irrigation districts and the sale of bonds arising therefrom and declaring an emergency," and also acts amendatory thereof and supplemental thereto.

## II.

That this defendant was organized for the purposes set forth and declared in the aforesaid acts of the Legislature and has heretofore exercised all the powers and functions given and granted to irrigation districts thereby.



## III.

That in carrying out the purposes for which it was organized and performing the functions of an irrigation district, the defendant Priest Rapids Irrigation District acquired title to real property, certain existing irrigation works and facilities and constructed other facilities for the purpose of enabling it to furnish water to lands within the district. That in the course of its operations, assessments were levied against various parcels of land in the district, which assessments were not paid and through foreclosure proceedings pursuant to the aforesaid acts of the Legislature, and district acquired title to numerous parcels of land previously held in private ownership, and that the district continued to own said real and personal property and to operate the district facilities as an operating district until on or about the 23rd day of February, 1943.

## IV.

That prior to said date, to-wit, February 23, 1943, numerous persons had acquired title to real property within the boundaries of the district, received water furnished by the [134] irrigation district, constructed the necessary distribution facilities for the distribution of water upon the land and thereby developed numerous privately owned parcels of land within the district served entirely by the facilities owned and operated by the defendant district.

## V.

That in carrying out and performing the foregoing purposes for which it was organized in the manner aforesaid, the defendant Priest Rapids Irrigation District had on February 23, 1943, acquired and then owned and held title to certain real and personal property which, together with the value thereof, was as follows, or is described as follows:

Designation	Feature	Total Values
A	Power Canal .....	\$ 153,200
B	Generating Plant—Structures .....	149,900
C	Generating Plant—Equipment .....	121,500
D	Coyote Pumping Station—Structures .....	39,900
E	Coyote Pumping Station—Equipment.....	59,270
F	Transformers and Switches .....	30,700
G	Transmission Line.....	79,900
H	Main Irrigation Canal.....	74,000
I	Lateral System.....	9,700
J	Misc. Property .....	1,790
K	Future Development Expense.....	3,800
L	Water and Power Rights .....	337,025
Total.....		\$1,060,685

## VI.

That on February 23, 1943, an order was entered by this court in the above entitled proceeding, a true and correct copy of which order is attached hereto marked "Exhibit A," and made a part hereof and that as a result of said order and immediately thereafter, and in order to accomplished the purposes for which said order was entered, the petitioner United States of America took possession of all the property of this defendant except its power plant, power canal and transmission lines.

## VII.

That possession of the transmission lines was taken on July 30 and August 3, 1943, and the pumping plant on April 17, 1943, and possession of the power plant [135] and canal were taken from this defendant on or about the 1st day of October 1943, at 12 noon.

## VIII.

That the entry of said order on February 23, 1943 and the taking possession of the property of the defendant district rendered the district wholly incapable of carrying out and performing in any degree whatsoever the purposes for which it was organized, and that because of the acts of the petitioner the defendant Priest Rapids Irrigation District was compelled to wholly discontinue and cease operations; that such effect upon the district will be permanent and that because thereof it will be wholly impossible for the district at any time in the future to perform any of its functions as an irrigation district and as a result thereof all landowners in the district have been wholly deprived of the uses and benefits for which the defendant district was organized and established.

## IX.

That this defendant prior to February 23, 1943, held the naked legal title to the district property as trustee for the landowners entitled to receive water from the district and this defendant, Priest Rapids Irrigation District, now alleges that the owners of land so entitled to receive water were then the equitable owners of the district property and became

the legal owners thereof when the district was compelled to cease functioning as such and are now entitled to receive and to have distributed to them all compensation which the court shall award to the owners of the district assets.

## X.

Your petitioner further alleges that a landowner or landowners representative of the various classes of land and rights in the district should be made a party or parties to this proceeding as representative of himself and of others similarly situated [136] for the purpose of determining the right of each and every landowner in the district as of February 23, 1943, to share in the assets of the district represented by the compensation to be awarded in this proceeding as the same shall be finally determined in this action on the basis of the ratio of the acreage held by each landowner to the total acreage in the district in private ownership on February 23, 1943.

## XI.

That the sum of \$1,060,685.00 is the just compensation which should be awarded to this defendant in this proceeding, and that an order should be entered herein directing that upon the crediting of the amount heretofore paid by the petitioner on the bonds of this defendant, the balance of said just compensation should be paid over to this defendant as trustee, and that it be authorized to divide the same among the property owners as of February 23, 1943, on the basis of acreage as above set forth.

Wherefore, defendant prays that an order be entered authorizing and directing the landowner representative of other landowners be joined as a defendant in this action and that in this proceeding an order be entered directing that the valuation as ultimately determined in this action be paid to the Priest Rapids Irrigation District as trustee for the use and benefit of all property owners in the district as of February 32, 1943, and for such other and further relief as to the Court may seem just and equitable in the premises.

MOULTON & POWELL,  
Attorneys for defendant  
Priest Rapids Irrigation  
District.

State of Washington,  
County of Yakima—ss.

B. Salvini, being first duly sworn, on oath deposes and says: That he is President of the Board of Directors of Priest Rapids Irrigation District, that he has read the foregoing Answer, knows the contents thereof, and the same is true, as he verily believes.

B. SALVINI.

Subscribed and sworn to before me this 9th day of January, 1945.

CHARLES L. POWELL,  
Notary Public in and for the  
State of Washington,  
Residing at Kennewick.



## EXHIBIT "A"

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS,

Defendant.

ORDER GRANTING RIGHT OF  
IMMEDIATE POSSESSION.

This matter having come on regularly this day upon petitioner's motion and affidavit for right of immediate possession and it appearing therefrom that the property described in the petition for condemnation is being acquired in time of war for military, naval, or other war purposes and that immediate possession thereof to the extent of the interest hereinafter described is required in order that said property may forthwith be occupied, used and improved for the purpose described in said petition and as provided in Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, now, therefore, it is hereby

Ordered that the right of immediate possession is hereby granted to the petitioner herein, the United States of America, of the property hereinafter de-



scribed. It is further ordered that when the names and addresses of record owners and parties in possession are obtained, notice of the entry of this order shall be given to record owners and to any person who is, on this day, actually occupying or cultivating said described lands, such notice to be given by depositing certified copies hereof in the United States registered mail in envelopes addressed to each such person; provided, that when the person so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient.

Said property is described as follows, to-wit:

The fee simple title, subject, however, to exisiting easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to wit: [139]

Area "A"

Beginning at the intersection of the East line of Section 31, T. 13 N. R. 28 E., with the Southerly or right bank of the Columbia River; thence

Meandering in a Northwesterly direction along the south Bank of the Columbia River to its intersection with the North-South center line of Sec. 4 T. 13 N. R. 25 E.; thence;

In a Southerly direction along the North-South center line of Secs. 4, 9, 16, and 21 to the S $\frac{1}{4}$  corner of Sec. 21; thence;

East along the South line of Sec. 21 to its South-east corner; thence;

South along the West line of Sec. 27 and 34 to the

Southwest corner of Sec. 34; T. 13 N. R. 25 E.;  
thence;

East along the North line of Sec. 4, T. 12 N. R. 25 E. to the Northeast corner of Sec. 4; thence;

South along the West line of Secs. 3, 10, 15, 22, 27 to the Southwest corner of Sec. 27; thence;

East along the South line of Secs. 27 and 26 to the Southeast corner of Sec. 26; thence;

South along the West line of Sec. 36 to its Southwest corner; thence;

East along the South line of Sec. 36, T. 12 N., R. 25 E. and Sec. 31, T. 12 N. R. 26 E., to the Southeast corner of Sec. 31, thence;

South along the West line of Sec. 5, T. 11 N. R. 26 E., to its Southwest corner; thence;

East along the South line of Sec. 5 and 4 to the Southeast corner of Sec. 4; thence;

South along the West line of Sec. 10 to its Southwest corner; thence;

East along the South line of Secs. 10 and 11 to the Southeast corner of Sec. 11; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1 to its Southeast corner; thence;

North along the East line of Sec. 1 to its Northeast corner; thence;

East along the South line of Sec. 31, T. 12 N. R. 27 E. to the Southeast corner of Sec. 31; thence;

North along the East line of Sec. 31 to its Northeast corner; thence;

East along the South line of Sec. 29 to its Southeast corner; thence;

North along the East line of Sec. 29 to its Northeast corner; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

North along the East line of Sec. 21 to its Northeast corner; thence;

East along the South line of Sec. 15 to its Southeast corner; thence;

North along the East line of Sec. 15 to its Northeast corner; thence;

East along the South line of Sec. 11 to its Southeast corner; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1, T. 12 N. R. 27 E. and Sec. 6, T. 12 N., R. 28 E., to the Southeast corner of Sec. 6; thence;

North along the East line of Sec. 6, T. 12 N., R. 28 E., and Sec. 31, T. 13 N., R. 28 E. to its intersection with the Southerly bank of the Columbia River to the point of beginning.

Said lands are situate in Benton County, Washington, and contain 176,323 acres, more or less.

#### Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East, West Meridian with the Westerly or right bank of the Columbia River; thence in a Southerly direc-

tion meandering along the right bank of the Columbia River to its intersection with the South line of Section 20, Township 9 North, Range 29 East; thence West along the South line of Sections 20 and 19, Township 9 North, Range 29 East and Sections 24 and 23, Township 9 North, Range 28 East to the Southwest corner of Section 23; thence North along the West line of Section 23 to its Northwest corner; thence West along the South line of Section 15 and 16 to the Southwest corner of Section 16; thence North along the West line of Sections 16, 9 and 4, Township 9 North, Range 28 East, and Sections 33, 28, 21, 16, 9 and 4, Township 10 North, Range 28 East to the Northwest corner of Section 4; thence East along the North line of Sections 4, 3 and 2 to the point of beginning.

Said land contains 17,510 acres, more or less, and is situate in Benton County, Washington.

Dated this 23rd day of February, 1943.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

HART SNYDER,  
Special Attorney for the  
Department of Justice.

Filed February 12, 1945.

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS; PRIEST RAPIDS  
IRRIGATION DISTRICT, a municipal cor-  
poration of the State of Washington, et al.,  
Defendants.

DEMURRER TO ANSWER AND CROSS-COM-  
PLAINT OF PRIEST RAPIDS IRRIGA-  
TION DISTRICT AS TO PARCEL PR-1,  
TRACT NO. W-2004, PARCEL PR-2, PAR-  
CEL PR-3, TRACT NO. 6-452, PARCEL  
PR-4, PARCEL PR-5.

Comes now the petitioner, by its undersigned at-  
torneys of record, and demurs to the answer and  
cross-complaint of Priest Rapids Irrigation Dis-  
trict, a municipal corporation of the State of Wash-  
ington, and this demurrer is made separately and  
severally as to each paragraph, matter, and allega-  
tion thereof, on the grounds and for the reasons as  
follows, to-wit:

1. That said defendant has no legal capacity to  
answer or sue.

2. That there is a defect of parties defendant.
3. That said cross-complaint does not state facts sufficient to constitute a cause of action.

BERNARD H. RAMSEY,  
Special Assistant to the  
Attorney General.

FRANK B. REID,  
Special Attorney,  
Department of Justice.

EDWARD M. CONNELLY,  
United States Attorney.

[Endorsed]: Filed April 25, 1945. [142]



In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS; RICHLAND IRRIGATION DISTRICT, a corporation of the  
State of Washington, et al., STATE OF  
WASHINGTON, et al.,

Defendants.

and

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS; PRIEST RAPIDS  
IRRIGATION DISTRICT, a municipal corporation of the State of Washington, et al.,

Defendants.

## MEMORANDUM OF THE COURT

These two Irrigation Districts have set up in their answers allegations which raise the issue as to the right to compensation for the assets owned by the Districts. To each affirmative answer, the petitioner has interposed a demurrer. The demurrer in each case is identical.

The petitioner first contends that the persons signing the answers are no longer qualified so to sign

because the Irrigation Districts have been out of business for three years and held no elections. Assuming *arguendo* the correctness of petitioner's contention, this does not mean that the property owners within the District are not entitled to defend this action. It is agreed by the counsel that, under the Washington Statutes and Decisions, an irrigation district holds legal title to the property owned by the District, which title it holds in trust for the owners of land within the District who have a beneficial interest. The situation parallels that presented in *State ex-rel Pryor vs. Paul*, 5 Wash. 2d 90. In that case, the Horse Heaven Irrigation District had been dissolved through the statutory process. It owned a considerable amount of property. The Supreme Court approved the action of trial court in appointing [143] the directors of the District to proceed as Trustees for the creditors and property holders of the District and account for the property and money to the Court. It is elementary that a trust will not fail for the lack of a trustee so that, even if we assume that the State Statute controlling the distribution of assets upon the dissolution of an irrigation district is deficient, the Court would have not only the right but the duty to appoint a trustee or trustees to represent the beneficiaries or land-owners whose property has been taken.

I see no merit in petitioner's second contention that there is a defect of parties defendant. The petitioners selected the parties defendant. This is the first time in my experience that I have heard of a plaintiff complaining that the defendants of its choice were not proper.

The petitioner's third attack upon the affirmative answers is that they fail to state facts sufficient to constitute a defense. I have considered all of the cases cited by counsel on both sides. My failure to discuss them in no way indicates lack of consideration of them. The fact, however, is that we have presented here an anomalous situation in which very little benefit can be derived from other cases. These irrigation districts, on February 23, 1943, owned certain assets. They held such assets in trust for the landowners. On that date, an order for immediate possession of all the property of the Districts and within the Districts was signed. From time to time thereafter, declarations of taking were filed covering various tracts within the Districts. After legal title to all the land in the Districts had been acquired by the petitioner, the property involved here was taken by the Government by filing declarations of taking. It seems to me it would be grossly unfair, if these landowners owned a beneficial interest in the District property, to deprive them of their opportunity for compensation for such property simply because the Government chose to take their land before it took the legal title which the Districts held in trust for the owners of the land. To reach such a conclusion would do violence to my conception of the obligation which the Government owes to its citizens whose property it takes. The Government had the power to control the litigation. The landowner was afforded no choice. For the Government to seek to exercise its power to the [144] substantial disadvantage of the landowner is unjust, inequitable and

improper. I know that a legal argument can be made to the contrary. Such argument can be buttressed by well-considered opinions of the appellate courts. Viewed as a whole, however, it must be admitted that the Government never tried to do this before and that there is no case which covers the situation presented here.

The fact that most of these cases involving the lands themselves have been tried should not prevent the landowners from receiving that to which they are entitled out to the Districts' assets on the theory that a condemnation case can only be tried once and that, in these proceedings, the landowners are attempting to take a second bite at the apple. The fact is that, in the first case which was tried, the landowner attempted to assert his claim to his proportionate share in the District's assets, the petitioner objected and I rule against the landowner. The basis of this ruling was that in the trial for the purpose of determining the compensation to be paid for a separate tract, there was no room to try out also the value of that landowner's proportionate share of the District assets. He was not the owner of the legal title to the District assets. He had no right to assert a direct claim to his proportionate share. Furthermore, as a matter of procedure, if I had permitted each landowner to assert his claim in each separate trial, it would have resulted in chaos and interminable delay as a consequence of which this cases never would have been completed. Imagine the situation in each case of having the voluminous testimony as to the value of District

assets presented to each separate jury. Furthermore, it would have resulted in an absurd situation because the landowner in one case would have a jury fixing one value upon the District's assets and then the jury in the next case might place an entirely different value upon the District's assets. The awkwardness and the confusion which would have resulted was realized by counsel on both sides and dozens of cases have been tried since with the understanding that, at some time, the question of the right of the landowners to their proportionate share of the value of the District assets would be thrashed out.

On the other hand, the landowners are not entitled to compensation for that portion of the District assets which was valuable only for irrigation [145] purposes. In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land. For the owner of the lands now to receive compensation for the District assets which were devoted to irrigation puposes would amount to double compensation. Furthermore, the Government has paid out to the holders of the bonds in the Priest Rapids Irrigation District \$170,500.00. It has paid out to the holders of the bonds of the Richland Irrigation District \$97,000. Clearly it is entitled to offset the amount thus paid out against



any claim for compensation for the District assets.

It seems to me that what must be done in this case is that the Districts set up in their answers their contention as to the value of that portion of the assets in each instance which is not applicable to irrigation purposes and make claim for that amount after giving credit for the sums the petitioner expended in the payment of District obligations. While some difficulty may be encountered in making such allocation, I am sure it is not insuperable. I had personal experience in working out the formula for the allocation as to power and flood control and navigation on the Bonneville Dam. I know that a similar formula was worked out as between power and reclamation on the Grand Coulee Dam. While I do not attempt now to decide the question, I am frank to say, as I look at the answer of the defendant Richland Irrigation District, I do not see how it can be entitled to any compensation. It was exclusively an irrigation district and its assets were exclusively used for irrigation purposes. Any assets listed which were not so used were more than covered by the \$97,000 which the petitioner paid. On the other hand, the Priest Rapids District, according to its answer, owned non-irrigation assets valued substantially in excess of the amount of the bond money paid on its behalf.

I will sustain the demurrer to each affirmative defense granting to the defendants, however, the right to file a second amended answer embracing the theory heretofore outlined by me. The prayers in the answers should also include the request that the Court appoint some person or persons as trus-



tees to [146] liquidate the assets of the Districts and account for the money received to the Court for distribution to those entitled to such money.

L. B. SCHWELLENBACH,

United States District Judge.

CC: to B. H. Ramsey, Special Assistant to the Attorney General, 520 Miller Building, Yakima, Washington; and to Messrs. Moulton & Powell. Attorneys at Law, Kennewick, Washington, this 21st day of June, 1945. ECL Dep. Clerk.

Filed June 21, 1945.

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In the District Court of the United States for the Eastern District of Washington, Southern Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.;

PRIEST RAPIDS IRRIGATION DISTRICT, a municipal corporation of the State of Washington,

Defendants.

ORDER SUSTAINING DEMURRER

W-2004

This matter coming on for hearing upon the demurrer of the petitioner to the affirmative answer

of the defendants, and after hearing said demurrer and the argument of counsel in support thereof, and being fully advised in the premises,

It is hereby ordered that the said demurrer be and the same is hereby sustained and the defendants are granted the right to file a second amended answer herein.

Done in open Court this 25 day of June, 1945.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by:

JOSEPH L. THOMAS,  
Special Attorney for the De-  
partment of Justice.

Filed June 25, 1945. [147]

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[Title of District Court and Cause.]

FIRST AMENDED ANSWER AND PETITION  
FOR PAYMENT OF COMPENSATION

Comes now the Priest Rapids Irrigation District, a municipal corporation, and answering the amended petition for condemnation as to Parcel Tr. 1 to Parcel Tr. 5, inclusive, admits, denies and alleges as follows:

I.

Answering Paragraph III of said petition, this defendant denies the same, and the whole thereof.

## II.

Answering Paragraph IV of said amended petition, this defendant denies the same, and the whole thereof.

## III.

Answering Paragraph V of said petition, this defendant admits the same.

## IV.

Answering Paragraph VI of said petition, this defendant denies the same, and the whole thereof, and by reference incorporates herein and makes a part thereof, the petition hereinafter set forth and the whole thereof.

And for further answer and by way of cross complaint and petition for payment of compensation and distribution thereof, Priest Rapids Irrigation District, a corporation, one of the defendants herein, alleges: [148]

## I.

That Priest Rapids Irrigation District is and at all times herein mentioned was a Washington corporation, organized and existing under and pursuant to the laws of the State of Washington, particularly the Act of March 02, 1890, entitled "An Act providing for the organization and the governing of irrigation districts and the sale of bonds arising therefrom and declaring an emergency", and also acts amendatory thereof and supplemental thereto.

## II.

That this defendant was organized for the purposes set forth and declared in the aforesaid acts of the Legislature and has heretofore exercised all the powers and functions given and granted to irrigation districts thereby.

## III.

That in carrying out the purposes for which it was organized and performing the functions of an irrigation district, the defendant Priest Rapids Irrigation District acquired title to real and personal property and certain existing irrigation works and facilities and constructed other facilities for the purpose of enabling it to furnish water to lands within the district. That in addition to other properties used exclusively for irrigation purposes this defendant acquired title to one hydro-electric power plant at Priest Rapids on the Columbia River, together with all water rights, transmission lines and generating equipment. That in the course of its operations, assessments were levied against various parcels of land in the district, which assessments were not paid, and through foreclosure proceedings pursuant to the aforesaid acts of the Legislature, the district acquired title to numerous parcels of land previously held in private ownership, and that the district continued to own said real and personal property and to operate the district facilities as an operating district until on or about the 23rd day of February, 1943. [149]

IV.

That prior to said date, to-wit, February 23, 1943, numerous persons had acquired title to real property within the boundaries of the district, received water furnished by the irrigation district, constructed the necessary distribution facilities for the distribution of water upon the land and thereby developed numerous privately owned parcels of land within the district served entirely by the facilities owned and operated by the defendant district.

V.

That in carrying out and performing the foregoing purposes this defendant, Priest Rapids Irrigation District, on February 23, 1943, had acquired title to certain property not used exclusively in the delivery of irrigation water to property within the district. That said properties and the values thereof as of the date possession was taken from this defendant are as follows:

Designation	Feature	Values
A	Power Canal .....	\$153,200.00
B	Generating Plant—Structures .....	149,900.00
C	Generating Plant—Equipment .....	121,500.00
D	Transformers and Switches .....	30,700.00
E	Transmission Lines .....	79,900.00
F	Miscellaneous Property.....	1,790.00
G	Future Development Expense.....	3,800.00
H	Water and Power Rights .....	307,025.00
Total.....		<hr/> \$847,815.00

## VI.

That on February 23, 1943, an order was entered by this Court in the above entitled proceeding, a true and correct copy of which order is attached to this defendant's original answer marked "Exhibit A", and made a part hereof, and that as a result of said order and immediately thereafter, and in order to accomplish the purposes for which said order was entered, the petitioner, United States of America, took possession of all the property of this defendant except its power plant, power canal and transmission lines. [150]

## VII.

That possession of the transmission lines, power plant and canal were taken from this defendant on or about the 1st day of October, 1943, at 12 noon.

## VIII.

That the entry of said order on February 23, 1943, and the taking possession of the property of the defendant district rendered the district wholly incapable of carrying out and performing in any degree whatsoever the purposes for which it was organized, and that because of the acts of the petitioner the defendant Priest Rapids Irrigation District was compelled to wholly discontinue and cease operations; that such effect upon the district will be permanent and that because thereof it will be wholly impossible for the district at any time in the future to perform any of its functions as an irriga-



tion district, and as a result thereof all landowners in the district have been wholly deprived of the uses and benefits for which the defendant district was organized and established and of their interest in the property of the district.

### IX.

That this defendant prior to February 23, 1943, held the naked legal title to all the district property as trustee for the landowners entitled to receive water from the district and this defendant, Priest Rapids Irrigation District, now alleges that the owners of land within the district were the equitable owners of all the district property when the district was compelled to cease functioning as such, and are now entitled to receive and to have distributed to them all compensation which shall be awarded as just compensation for the taking of the district assets.

### X.

That this defendant is duly organized and existing irrigation district under the laws of the State of Washington, and its affairs are administered by B. Salvini and J. H. Evett as duly elected and qualified directors, and R. S. Reiersen as its duly appointed and qualified secretary. That they are charged under the law with accounting for all monies received as such officers, [151] and paying the same to the County Treasurer of Benton County. That the values of the assets above described should be determined by a trial before a jury and just compensation for the taking of the same thereby determined

and that payment thereof should be made to Priest Rapids Irrigation District through the County Treasurer of Benton County, Washington. That when said payment is made the defendant may then pay the assets to the persons entitled thereto in liquidation proceedings instituted in the Superior Court of the State of Washington. That this defendant alleges that the persons entitled to said assets are the legal owners of the real property within the district as of February 23, 1943.

## XI.

That in the alternative and only in the event this court should deny the right of the Priest Rapids Irrigation District to collect the just compensation for the property above described, then the Court should appoint B. Salvini, J. H. Evett and R. S. Reiersen as trustees to liquidate the assets of the district, to have the just compensation determined for the taking of the assets of the district and to collect the same and pay and distribute the assets to the persons who were landowners on February 23, 1943, on the basis of the ratio of the acreage held by each landowner to the total acreage in private ownership on said last named date.

## XII.

That \$847,815.00 is the fair value and the just compensation which should be awarded to this defendant in this proceeding for the taking of the items of property from the defendant above described.

And for further answer and by way of Second cause of action to its cross-complaint and petition for payment of compensation, this defendant alleges: [152]

I.

This defendant repeats the allegations of paragraphs I to XII, inclusive, of its first cause of action and makes them a part hereof the same as is set forth at length herein.

II.

That in addition to the items of property not used exclusively for irrigation purposes and described in paragraph V of the first cause of action in this complaint and petition for compensation, this defendant on February 23, 1943, owned the following described assets used in the operation of its irrigation system:

(a) Coyote Pumping station structure .....	\$ 39,900.00
(b) Coyote Pumping station equipment.....	59,270.00
(c) Main irrigation system .....	74,000.00
(d) Lateral system .....	9,700.00
<hr/>	
Total.....	\$182,870.00

III.

That heretofore the petitioner, United States of America, has paid and discharged the bonded indebtedness of this defendant in the sum of \$170,500.00. That said bonded indebtedness was a lien on the irrigation assets last above described, which lien is created by statute and that the said irrigation assets should be valued in this proceeding and the value thereof off-set against the bonded indebtedness

heretofore paid by the said petitioner and the balance thereof distributed to the legal owners of the real property in the district as of February 23, 1943.

Wherefore, this defendant prays:

(a) That the just compensation for the taking of the property of this defendant be determined before a jury and that the amount awarded be paid to this defendant to be distributed by it pursuant to liquidation proceedings in the State Court, or

(b) In the alternative, and only in the event the right of this defendant to receive such award should be denied, that B. Salvini, J. H. Evett and R. S. Reiersen be appointed trustees to conduct these proceedings to determine just compensation, to liquidate the assets of said district and to pay and distribute the same to the landowners as of February 23, 1943, under the supervision of the Court.

(c) For such other and further relief as the Court shall deem just and equitable.

MOULTON & POWELL,

Attorneys for Defendant

Priest Rapids Irrigation

District. [154]

State of Washington,  
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, on oath deposes and says: That he is secretary of the Board of Directors of Priest Rapids Irrigation District, that he has read the foregoing First Amended An-

swer and Petition for Payment of Compensation, knows the contents thereof, and the same is true, as he verily believes.

/s/ R. S. REIERSON.

Subscribed and sworn to before me this 4th day of Sept. 1945.

/s/ H. L. TAYLOR,

Notary Public in and for the  
State of Washington, Re-  
siding at Yakima, Wash.

Filed: Sept. 21, 1945. [153]

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[Title of District Court and Cause.]

DEMURRER TO AMENDED ANSWER AND  
PETITION OF PRIEST RAPIDS IRRIGA-  
TION DISTRICT AS TO PARCEL PR-1,  
TRACT NO. W-2004, PARCEL PR-2, PAR-  
CEL PR-3, TRACT NO. G-452, PARCEL  
PR-4, PARCEL PR-5.

Comes now the petitioner, by its undersigned attorneys or record, and demurs to the answer and cross-complaint of Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and this demurrer is made separately and severally as to each paragraph, matter, and allegation thereof, on the grounds and for the reason as follows, to-wit:

1. That said defendant has no legal capacity to answer or sue.
2. That there is a defect of parties defendant.

3. That said cross-complaint does not state facts sufficient to constitute a cause of action.

4. That a demurrer has heretofore been sustained in the above entitled proceeding to the answer and cross-complaint of the Priest Rapids Irrigation District, and that the amended answer alleges no new matters or things which would entitle it to the relief prayed for under the ruling of the Court on the demurrer to the answer and cross-complaint.

BERNARD H. RAMSEY,

Special Assistant to the  
Attorney General.

ERNEST FALK,

Special Attorney,  
Department of Justice.

EDWARD M. CONNELLY,

United States Attorney.

Filed: Oct. 24, 1945. [156]

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[Title of District Court and Cause.]

PETITIONER'S POINTS AND AUTHORITIES  
UPON DEMURRER TO AMENDED AN-  
SWER AND PETITION OF PRIEST RAP-  
IDS IRRIGATION DISTRICT AS TO PAR-  
CEL PR-1, TRACT NO. W-2004, PARCEL  
PR-2, PARCEL PR-3, TRACT NO. G-452,  
PARCEL PR-4, PARCEL PR-5.

I.

That the defendant, Priest Rapids Irrigation Dis-  
trict, has no legal capacity to answer or sue:



## Points and Authorities

The last legally elected and qualified board of directors of said district, consisting of B. Salvini, R. S. Reiersen and J. H. Evett, are neither de jure nor de facto officers of said district. Section R-7421, P-3200 Washington Statute provides that following the organization election, an irrigation district shall hold an annual election on the second Tuesday of December for the purpose of electing a director, or directors where the board consists of more than three members, and that the term of each director shall be for the term of three years from and after the first Tuesday of January next succeeding his election. Said section further provides that in case of any vacancy occurring in the office of a director, such vacancy shall be filled by appointment by the board of county commissioners of the county in which the proceeding for the organization of the district were had. No elections have been held within the district since 1942 and that term for which B. Salvini was elected in 1942 expired in January, 1945; that R. S. Reiersen resigned as director of said district in February, 1944, and since said date has acted as the secretary of said district; that J. H. Evett was appointed in 1942 to fill out the unexpired [157] portion of Director Frank Clark's term and that this term has long since expired.

Said section does not provide that the duly elected and qualified members of the board of directors shall continue to hold office until their successors are elected and qualified save in organization elections

and in the case of appointment made by the board of county commissioners to fill a vacancy pending an election. On the other hand, the section does expressly provide as follows:

“In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment by the board of county commissioners——”

That it was the intent of the legislature that a duly elected member of the board shall not continue in office beyond his term time is evidenced by the following language appearing in said section:

“The failure on the part of any irrigation district in this State heretofore or hereafter to hold one or more annual elections for selection of officers or otherwise to provide officers for the district shall not for that reason dissolve the district or impair its powers where later officers for said district shall be appointed or elected and shall qualify as such and shall exercise and duties of their respective offices in the manner provided by law——”

It is a well-known rule of statutory construction that by expressly enumerating the method or manner of accomplishing a certain result, all other means or methods are by inference excluded. *Expressio unius est exclusio alterius*, applies.

Further, these men, and none of them, could in any event be *de facto* officers of the district because they lack the primary qualifications for holding any

district office. Section R-7421, P-3200 provides that the qualifications of the directors of an irrigation district shall be the same as the qualifications of the electors of the district, and Section R-7420, P-3199 further provides that at all times the majority of the board of directors shall be residents of the county or counties within which the district is situated. Section R-7420, P-3199 fixes the qualifications of an elector as follows:

“Any person of the age of twenty-one years being a citizen of the United States and a resident of the State of Washington, who holds title to land or evidence of title to land embraced within the boundaries of any irrigation district or proposed irrigation district, in the case of an election for organization thereof, shall be entitled to vote at any election held therein.” [158]

It appears, therefore, that in order to be an officer of an irrigation district, one must own land within the district, and the majority of the board of directors must be resident within the county in which the district is situated. Neither Mr. Salvini nor Mr. Evett own a single foot of land in the Priest Rapids Irrigation District. Mr. Salvini is a resident of Yakima County whereas the Priest Rapids Irrigation District is situated in Benton County. The following rule is laid down in *Corpus Juris*, Page 1313, Section 892:

“The officers of an irrigation district are public officers although they are not necessarily

State officers and they must possess the statutory qualifications such as residence or ownership of property in the district, etc.”

We find that at the time the answer and cross-complaint of the district was filed in this case, that the district was attempting to act by and through B. Salvini and J. H. Evett, representing themselves as the board of directors of said district and that no member of the so-called board of directors at said time owned a single foot of land within the district and that two-thirds of said board were not residents of Benton County, in which the district is situated. It follows that these men were neither *de jure* nor *de facto* officers of the district and could not at said time, *now now*, act for and on behalf of said district. The district was at the time the answer and cross-complaint was filed and is now without a legally constituted board of directors and has no legal capacity to answer or sue.

## II.

That there is a defect of parties defendant:

### Points and Authorities

As has already been pointed out under Paragraph I above, the Priest Rapids Irrigation District, since it has no duly constituted board of directors by and through which it may act, is without legal capacity to answer or sue.

Further, it appears that said district through its answer and cross-complaint is appearing solely on behalf of the former owners of lands within the district. No former owner appears in this proceed-

ing. The answer and cross-complaint alleges that the district never held any interest to the district property save the naked legal title and that it no longer holds the legal title. [159]

The district alleges that it is appearing solely on behalf and for the benefit of persons who own no lands within the district. Even if the district was appearing by and through a properly constituted board of directors, it is without statutory or any authority to appear on behalf of strangers to the district and against the owner of the lands within the district. The trusteeship imposed upon the district is for the sole benefit of the lands within the district and the owners thereof. A review of the record establishes that the petitioner is the sole owner of all lands within the district. The petitioner, United States of America, between February 23, 1943, and March 4, 1944, acquired all of the privately-owned lands within the district and thereby as sole owner of such lands became the sole beneficiary of the trust imposed upon the district. Thereafter, on May 12, 1944, the petitioner acquired the legal title to all properties to which legal title was held by the district by the filing of a declaration of taking. There was deposited in Court simultaneously therewith a sufficient sum of money to pay all of the obligations of said district and to relieve said properties of all liens created by said obligations. The district has no right to appear on behalf of and for the sole benefit of such prior owners of lands within the district as it may elect to represent.

In Re Horse Heaven Irrigation District 11,  
Washington 2d, Page 218



As a matter of fact, there are no parties defendant appearing through the answer and cross-complaint herein:

### III.

That said cross-complaint does not state facts sufficient to constitute a cause of action or cross-complaint:

#### Points and Authorities

It appears from the files and records in Civil No. 128, *United States vs. Alberts*, and in Civil Nos. 155, 152, 160 and 136, as well as in the allegations of the answer and cross-complaint herein, that the petitioner, *United States of America*, did acquire fee title to all lands within the irrigation district and thereby became the sole beneficiary as to all properties and facilities of the district subject only to the outstanding lien of the bonds and [160] other indebtedness of said district, leaving in the district as trustee for the sole use and benefit of the petitioner, *United States of America*, as the owner of the lands, the naked legal title to the district facilities and properties. That, thereafter, the petitioner, *United States of America*, acquired the naked legal title from the district and paid all bonded and other indebtedness of the district constituting a lien upon said properties. It is a well-established principal of law that:

“The estate of a trustee ceases to exist when the purposes of creation of a trust are satisfied.”



Standard Oil Company vs. Mehrtens 118 So., Page 216; Smith vs. Massachusetts Mutual Life Insurance Company 156 So., Page 498; 95 A.L.R., Page 508; Zelly vs. Zelly 136 Atlantic, Page 738.

Or, to use the language found in Brooklyn Trust Company vs. Lester 267 N.Y.S., Page 287.

“Powers in trust expire when the object of their creation fail or become impossible or unattainable.”

The rule is stated in Guarantee Trust Company of New York vs. Cutting 225 N.Y.S., Page 407, as follows:

“Trust terminates when beneficiary acquires present right to corpus as well as to entire income.”

The trusteeship of the district has terminated with the acquisition by the beneficiary, the United States of America, or the corpus. The purposes of the trust have been fully satisfied. The object of the powers of the trust have become impossible and unattainable. The district, admittedly, never held anything other than the naked legal title for the use and benefit of the owners of the land (the United States of America.) The acquisition of this naked legal title by the beneficiary certainly does not predicate a suit by the trustee to recover from the beneficiary for the benefit of third parties the value of the trust properties. The full beneficial use of those proper-

ties was already vested in the Government. The naked title was entirely without value in that it was without financial worth to the trustee and imposed upon the trustee certain continuing duties. Trusteeship had terminated by law. I know of no case where a trustee holding nothing but the naked legal title without any beneficial interest has ever been permitted to litigate with a beneficiary over the value of such naked legal title upon termination of the trusteeship. Such [161] procedure would be abhorrent to the entire theory of trusts. As has already been pointed out under Paragraph II above, the district does not seek here to litigate the value of the trust properties for its own benefit, but attempts to appear through the answer and cross-complaint on behalf of certain one-time owners of land within the district presumably upon the theory that these strangers to the trust are entitled to recover from the beneficiary of the trust the value of the district properties. No cause of action or suit is stated under the cross-complaint. The district is without legal capacity to sue. The suit is not actually a suit by the district at all, but is an attempt on the part of the district to appear on behalf of strangers to the trust. The district, as trustee, cannot in any event litigate with the beneficiary the value of properties in which the full beneficial use is already vested in the beneficiary simply because that by reason of the failure of the trust the trustee has been divested of the naked legal title and that title has been vested in the beneficiary.

## IV.

That a demurrer has heretofore been sustained in the above entitled proceeding to the answer and cross-complaint of the Priest Rapids Irrigation District, and that the amended answer alleges no new matters or things which would entitle it to the relief prayed for under the ruling of the Court on the demurrer to the answer and cross-complaint.

## Points and Authorities

The Priest Rapids Irrigation District, by its amended answer and petition under Paragraph 5 thereof, sets out what it designates as property not used exclusively in the delivery of irrigation water to property within the district, and then proceeds to list as such property the power canal, the generating plant structures, the generating plant equipment, the transformers, the switches, the transmission lines, and water and power rights, setting forth the value of these properties as in excess of \$800,000. The Priest Rapids Irrigation District is a pump irrigation district, all water for the irrigation of the 12,000 acres within the boundaries of the Priest Rapids Irrigation District is raised to the level of the main canals of the district by the pumping facilities of the district located at Coyote Rapids. These pumps are driven by [162] electricity. This electricity is generated in the power plant belonging to the district through the power generating facilities therein installed. The electricity is carried to the pumps through the transmission lines of the district

where it is utilized to pump the water from the Columbia River to the main canals of the district by which it is distributed to the lands within the district. It must be obvious that without the utilization of the power canal for the diversion of water, the generating plant with its equipment, transformers, switches, and transmission lines, that the Priest Rapids Irrigation District could not operate at all, and could not deliver water to the lands within its boundaries lying above the level of the Columbia River. So, too, with the water and power rights listed. All of its water, other than that used for the generation of power, is appurtenant to the lands within the district, and is required for the irrigation of those lands. The water used for the generation of power makes it possible to develop the power by means of which the water for irrigation is lifted from the Columbia River. The district, under its answer, is again attempting to do what the district attempted to do under its first answer, as pointed out by Judge Schwellenbach, "Receive compensation for the district assets which were devoted to irrigation purposes," and as Judge Schwellenbach further pointed out, "This would amount to double compensation." It is plain, I think, that the district has not attempted to follow the procedure suggested by Judge Schwellenbach, that is, set out that portion of the assets which is not applicable to irrigation purposes, and make claim for that sum less the sum expended by the Government in retiring the district obligations, to-wit: \$170,500. On the other hand, they have attempted to do by indirection what they

have been specifically warned they could not do directly: Claim compensation for assets devoted to irrigation purposes. The answer and petition is a bare-faced attempt to collect from the Government double compensation.

The procedure in this case was plainly set forth Judge Schwellenbach in his opinion sustaining the demurrer of the Government to the amended answer and petition of the Priest Rapids Irrigation District. Attention is called to the following portion of that opinion: [163]

“On the other hand, the landowners are not entitled to compensation for that portion of the District assets which was valuable only for irrigation purposes. In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land. For the owners of those lands now to receive compensation for the District assets which were devoted to irrigation purposes would amount to double compensation. Furthermore, the Government has paid out to the holders of the bonds in the Priest Rapids Irrigation District \$170,500. It has paid out to the holders of the bonds of the Richland Irrigation District \$97,000. Clearly it is entitled to offset the amount thus paid out against any claim for compensation for the District assets.



“It seems to me that what must be done in this case is that the Districts set up in their answers their contention as to the value of that portion of the assets in each instance which is not applicable to irrigation purposes and make claim for that amount after giving credit for the sums the petitioner expended in the payment of District obligations. While some difficulty may be encountered in making such allocation, I am sure it is not insuperable. I had personal experience in working out the formula for the allocation as to power and flood control and navigation on the Bonneville Dam. I know that a similar formula was worked out as between power and reclamation in the Grand Coulee Dam.”

It is plainly evident, I think, that the district has elected to disregard the plain direction of the Court, and instead of setting out and claiming compensation for those assets which have no use in connection with irrigation, they have elected instead to list and claim compensation for assets primarily designed, acquired and utilized for irrigation by listing them as assets not used exclusively for irrigation. It is too plain to require argument that the



district is again attempting to claim double compensation for its assets in this proceeding.

Respectively submitted:

BERNARD H. RAMSEY,  
Special Assistant to the  
Attorney General.

EARNEST FALK,  
Special Attorney,  
Department of Justice.

EDWARD M. CONNELLY,  
United States Attorney.

Filed: Oct. 24, 1945. [164]

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In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128-99

UNITED STATES OF AMERICA,  
Petitioner.

vs.

CLEMENTS P. ALBERTS, et al., and PRIEST  
RAPIDS IRRIGATION DISTRICT,  
Defendants.

C. I. WRIGHT and MAMIE WRIGHT, husband  
and wife,  
Intervenors.

MOTION FOR LEAVE TO INTERVENE

Come now, C. I. Wright and Mamie Wright, and  
move the Court for an order authorizing and per-

mitting them to file the attached Complaint in Intervention in the above entitled action, and directing the nature of the process to be served on the petitioner herein.

This motion is based upon the records and files herein and the Complaint in Intervention attached hereto.

MOULTON & POWELL,  
/s/ J. K. CHEADLE,  
Attorneys for Interveners.

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[Title of District Court and Cause.]

### COMPLAINT IN INTERVENTION

Come now, C. I. Wright and Mamie Wright, husband and wife, and by leave of the court, file this their complaint in intervention herein, and for cause of intervention allege:

#### I.

That the interveners were on and prior to February 23, 1943, the owners of the following described real property, to-wit:

Southeast quarter of Southwest quarter of Southeast quarter, Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26), East, Willamette Meridian, containing 10 acres.

#### II.

That said property was located within the Priest Rapids Irrigation District, subject to assessments for said district, received its irrigation water from

said irrigation district, and said property and the interveners, as owners of said property, were entitled to each and all of the benefits, as well as the burdens, of the laws of the State of Washington pertaining to irrigation districts under which the Priest Rapids Irrigation District was organized and operated.

### III.

That the Priest Rapids Irrigation District did on February 23, 1943, have within its boundaries a total of 15,891.93 acres of land, of which 5,731.97 acres were owned by so-called private landowners such as interveners; that the balance was owned by said district; and that these interveners were therefore the owners of .174% of all the land in private ownership in said district as of said date. [166]

### IV.

That on February 23, 1943, a condemnation proceeding, entitled United States of America, petitioner, vs. Clements P. Alberts, defendant, Civil No. 128, was commenced in the above-entitled court by the United States of America; and that in its petition for condemnation filed on said date and in the order of this court entered on the same date and granting to the United States of America the right of immediate possession, the property covered by said petition and order included the farm lands and other real properties and improvements owned by the Priest Rapids Irrigation District and included the lands of so-called private landowners in said district, including the land owned by the interveners and described in paragraph I hereof.

## V.

That in April, 1943 and pursuant to said order of February 23, 1943, the petitioner, the United States of America, took possession of all the property of the Priest Rapids Irrigation District covered by said order, except said district's power plant, power canal and transmission lines; and that possession of said power plant, power canal and transmission lines was taken pursuant to said order on or about October 1, 1943.

## VI.

That on or about Aug. 26, 1943, the United States of America filed in said Civil No. 128 an amended petition for condemnation, accompanied by a declaration of taking and a deposit paid into court, entitled United States of America, petitioner, vs. Clements P. Alberts, C. I. Wright and Mamie Wright, et al., defendants, and numbered Civil No. 128-; that said amended petition and declaration of taking covered said property of these interveners but did not cover any of said properties of said district; and that by the filing of said declaration of taking the petitioner took title to said property of interveners, which title was described in said amended petition and declaration of taking as follows:

“The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipelines and for existing irrigation ditches, canals and laterals owned by the Priest Rapids Irrigation District.” [167]

## VII.

That on or about October 15, 1943, compensation for the taking of interveners' said property was determined by a jury in said proceedings No. 128-43. That in the course of said proceeding, on October 12, 1943, interveners offered to prove the value of the properties of the Priest Rapids Irrigation District, which had been taken by the petitioner pursuant to said order of February 23, 1943, in order that interveners might have said value determined and their proportionate share thereof awarded in their jury trial; that the petitioner objected to said offer of proof; and that said objection was sustained and said offer rejected, as explained by this court, because in the trial for determining the compensation to be paid for interveners' said land, there was no room to try also the value of their proportionate share of said district's properties, also because interveners were not the owners of the legal title to said district's properties and because they had no right to assert a direct claim to their proportionate share, and also in order to avoid the chaos, awkwardness and confusion of numerous determinations by different juries of the value of said district's properties. That said jury trial with respect to the value of interveners' said property proceeded in accordance with said limitation on proof; and that the compensation award to interveners was exclusively for the real property of interveners as herein above described.



## VIII.

That on October 8, 1943, in connection with this court's consideration of and ruling on a similar offer of proof in another proceeding in said Civil No. 128, counsel for petitioner stated in open court that petitioner was willing as part of the proceedings to have the record show that petitioner bound itself to make and file a declaration of taking covering the properties of the irrigation district involved, to which petitioner had obtained the immediate right of possession by the aforesaid order of February 23, 1943 and of which properties the petitioner took actual possession pursuant to said order; and that counsel for petitioner then further stated for the record in open court that said declaration of taking covering said district properties would be made "within the next few weeks." That proceedings against the farm tract [168] of interveners and against farm tracts of other private landowners in the Priest Rapids Irrigation District were conducted under said limitation on proof, in part because of said assurance given by petitioner in open court that petitioner would proceed expeditiously to file declarations of taking and have just compensation determined with respect to irrigation district properties.

## IX.

That petitioner, notwithstanding the matters of court record set forth in the preceding paragraph hereof, delayed over six months in making said declarations of taking covering said district properties.



## X.

That on April 24, 1944, in connection with other proceedings in said Civil No. 128, against farm tracts of private landowners in the Richland Irrigation District, this court gave notice to petitioner that unless petitioner promptly filed declarations of taking covering said district's properties, that court would change its ruling n the offer of proof made in said proceedings and allow private landowners of lands in said district to prove the value of their proportionate share in the Irrigation District and to submit testimony as to the value of the Irrigation District and to submit that issue to the jury.

## XI.

That subsequent to and as a result of said notice given on April 24, 1944 by this court, the petitioner in May, 1944 filed an amended petition and declaration of taking, numbered Civil No. 128-99, covering the properties of the Priest Rapids Irrigation District; and that said district properties have been covered only by the original petitions in Civil No. 128, and by the amended petition and declaration of taking in Civil No. 128-99.

## XII.

That petitioner by demurrer to the answer of the defendant Priest Rapids Irrigation District in said Civil No. 128-99 is contending and urging upon this court that said defendant district, named defendant by the petitioner, has no capacity to answer or de-

fend against the amended petition served on it by petitioner, and that the petitioner acquired from interveners and other similarly situated private landowners of property in said district full right, title and interest in and to all assets of said district, although in the proceedings in [169] Civil No. 128-43 in which petitioner acquired by condemnation the said land of interveners, there was not any proof of or compensation for the value of said district's properties, for the reasons set forth in paragraph VII hereof.

### XIII.

That under the laws of the State of Washington legal title to irrigation district properties is vested in the district and such properties are held by the district in trust for the purposes of the irrigation district and for the benefit of the creditors and private landowners of the district; that said relationship of trustee and beneficiaries existed between the Priest Rapids Irrigation District and interveners on February 23, 1943 with regard to the properties of said district taken by petitioner's exercise of the power of eminent domain and that said relationship continues to exist with regard to the fund of just compensation for said properties; that said fund stands in the place of said properties and that petitioner, the condemner, has no interest in said fund.

### XIV.

That just compensation for said district properties should be determined by a jury and be paid to

the defendant Priest Rapids Irrigation District to be held in trust and disposed of in accordance with the laws of the State of Washington, or alternatively, and in conformity with the law of the State of Washington, Remington's Revised Statutes, Title 6, Chapter 5, Section 930, that this court, after determination by a jury of the amount of just compensation, and payment thereof, should hold said compensation fund in the registry of this court, to be paid therefrom in accordance with the decree in an appropriate proceeding under the laws of the State of Washington for dissolution of the Priest Rapids Irrigation District and disposition of said fund which stands in the place of properties of said district, a municipal corporation of the State of Washington.

#### XV.

That interveners are entitled to intervention in this proceeding by reason of their said interest in said fund and their interest in the success of the defendant Priest Rapids Irrigation District. [170]

#### XVI.

That petitioner has taken by exercise of eminent domain said district's properties; that the Fifth Amendment of the Constitution of the United States of America requires that just compensation be paid by petitioner for said properties; and that the petitioner has sought and is seeking in the various parts of the condemnation proceeding Civil No. 128 to circumvent said constitutional requirement to the detriment of, and in violation of the constitutional

rights of, the Priest Rapids Irrigation District and the private landowners of property in said district on February 23, 1946, when petitioner exercised its power of eminent domain against the properties of said district.

### XVII.

That petitioner has sought and is seeking to take said districts properties without a jury trial on the issue of the value thereof; and that petitioner thereby seeks to deny to said district, and to said private landowners of property therein on February 23, 1943, the due process of law guaranteed to them by the Fifth Amendment of the Constitution of the United States of America.

### XVIII.

That this intervention is made by interveners for the benefit of themselves and all other persons similarly situated, more particularly each and every owner of land in private ownership within the Priest Rapids Irrigation District as of February 23, 1943.

Wherefore, interveners pray:

- (1) That the issue of just compensation for the taking of the properties of the Priest Rapids Irrigation District, covered by said order of February 23, 1943 and by the amended petition No 128-99, be determined by jury;
- (2) That the petitioner be held to have no right, title or interest in the fund of just compensation for said properties;

- (3) That said fund to be paid to the defendant Priest Rapids Irrigation District to be held in trust and disposed of in accordance with the laws of the State of Washington; or alternatively, that said fund to be held in the registry of [171] the above-entitled court, to be paid therefrom in accordance with the decree in an appropriate proceeding under the laws of the State of Washington for dissolution of the Priest Rapids Irrigation District and disposition of its assets.

MOULTON & POWELL,  
/s/ J. K. CHEADLE,  
Attorneys for Interveners.

State of Washington,  
County of Yakima—ss.

C. I. Wright, being first duly sworn, deposes and says: That he is one of the interveners above named and makes this verification in behalf of himself and intervener Mamie Wright; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ C. I. WRIGHT.

Subscribed and sworn to before me this 13th day of March, 1946.

[Seal] K. H. STONE,  
Notary Public in and for the State of Washington,  
residing in Sunnyside.

Filed: March 23, 1946. [172]



[Title of District Court and Cause.]

## PETITION

Comes now the Priest Rapids Irrigation District and respectfully petitions the above entitled Court and shows:

### I.

That there is paid into the Court in the above case as estimated just compensation for the taking of the property of this defendant the sum of \$170,500.00.

### II.

That as provided in the amended petition for condemnation and in the declaration of taking and order thereon, the district was indebted by reason of bonds and warrants outstanding and general obligations represented by vouchers in a sum representing approximately the amount paid into Court as estimated just compensation.

### III.

That all of the bonded indebtedness of this defendant has been paid and there are certain obligations of this defendant which must be paid.

### IV.

That there remains in the registry of the above entitled Court the sum of \$650.00, which is a portion of the estimated just compensation paid into court, and that petitioner should be authorized to withdraw



said sum and the same should be paid to petitioner to use in liquidation of the indebtedness and in meeting current obligations. [173]

This petition should not be construed as an admission of the correctness of the estimated just compensation paid into court, but is solely for the purpose of withdrawing and making available to petitioner the amount paid into the registry of the above entitled Court as estimated just compensation. The petitioner reserves the right to contest the sufficiency of the estimated just compensation so paid and to trial by jury therefor.

Wherefore, your petitioner prays that an order be entered authorizing and directing that the Clerk of the above entitled Court pay to petitioner the sum of \$650.00, being the balance of the estimated just compensation paid into court in this action with the declaration of taking herein.

PRIEST RAPIDS

IRRIGATION DISTRICT

By R. S. REIERSON,

Secretary.

MOULTON & POWELL,

Attorney for Priest Rapids  
Irrigation District.

State of Washington,  
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, states: That he is Secretary of the board of Directors of Priest

Rapids Irrigation District, that he has read the foregoing Petition, knows the contents thereof, and the same is true.

R. S. REIERSON.

Subscribed and sworn to before me this 12th day of February, 1946.

[Seal]                      HENRY V. BRIMMER,  
Notary Public in and for the State of Washington,  
residing at Yakima.

Filed: April 8, 1946. [174]

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[Title of District Court and Cause.]

### ORDER

This matter having come on regularly and in its order to be heard upon the petition of the Priest Rapids Irrigation District for the payment of \$650.00 now in the registry of the above entitled Court, and it appearing to the Court from the records and files herein and from the statements made in open court by counsel for the respective parties that all the indebtedness of the Priest Rapids Irrigation District has been paid, and that the sum of \$650.00 now in the registry of the above entitled Court represents the balance of estimated just compensation paid into this Court, and that the same should be paid to the Priest Rapids Irrigation Dis-

trict for use in its current operations, and the Court being duly and fully advised in the law and in the premises,

Now, therefore, it is hereby ordered that the sum of \$650.00 be paid to the Priest Rapids Irrigation District by the Clerk of the above entitled Court.

And it is further ordered that the payment of said sum to the Priest Rapids Irrigation District shall in no way constitute a waiver of the right of said District to contest the amount of estimated just compensation paid into the registry of the above entitled Court.

Done by the Court this 8th day of April, 1946.

J. STANLEY WEBSTER.

Approved:

BERNARD H. RAMSEY,  
of Attorneys for Petitioner.

Presented by:

CHARLES L. POWELL,  
of Attorneys for Defendant,  
Priest Rapids Irrigation  
District.

Filed: April 8, 1946. [175]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR HEARING  
ON DEMURRER.

Pursuant to stipulation between counsel for the petitioner and the defendant irrigation district, and for cause shown in said stipulation,

It is hereby ordered that the date for the hearing of petitioner's demurrer shall be such date subsequent to May 15, 1946 as the Court may set.

Done by the Court this 9th day of April, 1946.

LLOYD L. BLACK,

United States District Judge.

Presented by:

CHARLES L. POWELL,

MOULTON & POWELL,

Attorneys for Defendant.

Consented to:

BERNARD H. RAMSEY,

Attorney for Petitioner.

Filed: April 11, 1946.

In the District Court of the United States for the  
Eastern District of Washington, Southern  
Divison.

No. 128-99 and 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS and ERNEST H.  
DIETRICH and RUTH DIETRICH, husband  
and wife, JOE E. MILLARD, D. M. ALLEN,  
HENRY DERANLEAU, RICHLAND IR-  
RIGATION DISTRICT, a municipal corpo-  
ration of the State of Washington, C. I.  
WRIGHT and MAMIE WRIGHT, husband  
and wife, B. SALVINI, J. H. EVETT, and  
PRIEST RAPIDS IRRIGATION DIS-  
TRICT, a municipal corporation of the State  
of Washington,

Defendants.

MOTION FOR APPOINTMENT OF TRUSTEE  
OR RECEIVER AND FOR RESTRAINING  
ORDER.

Comes now the United States of America, peti-  
tioner herein, and shows:

I.

That heretofore the petitioner instituted this ac-  
tion and has long since acquired all of the private  
land within the Priest Rapids Irrigation District,

as well as all the private lands within the Richland Irrigation District hereinafter referred to as the Irrigation districts, and that now the fee title absolute to all such lands is vested in the United States of America, together with all appurtenances and rights of the former owners of said land, and that thereafter the petitioner filed in said cause of action, declarations of taking Nos. 99 and 100, whereby the petitioner acquired all of the separate lands owned by the Irrigation Districts, all of which more specifically appears from the records of this Court in this proceeding.

## II.

That after the United States had acquired all of the lands in said districts, as well as all of the property and rights of said districts, the [177] Irrigation Districts filed in this action certain pleadings seeking affirmative relief and the issue was joined by the petitioner filing herein its demurrers; that upon a hearing thereof, this Court sustained said demurrers and granted said Irrigation Districts leave to file amended pleadings with the suggestion that a prayer be contained therein for the appointment of a trustee or receiver, as appears from the Memorandum Opinion of this Court filed June 21, 1945, and orders filed June 25, 1945. The amended answers have been filed, without asking for a receiver, demurrer filed thereto, and are now pending before the Court.



## III.

That on the date of the institution of this action, the said Irrigation Districts, and each of them, were duly organized and existing public corporations under and by virtue of the laws of the State of Washington, but that as hereinabove set out the United States of America, by direct purchase and by the filing of declarations of taking in this proceeding, has acquired all of the privately-owned lands within the boundaries of each of said Districts, together with all water rights appurtenant to said lands, and has acquired all of the lands, properties, and operational facilities of each of said Districts by Declarations of Takings Nos. 99 and 100, as appears from the records of this Court herein; that each and all of the directors and officers of the said Districts, and each of them, have long since become disqualified to act for or on behalf of said Districts in the none of said directors and/or officers of said Districts own any land within said Districts and no longer have the qualifications provided by the laws of the State of Washington to act or serve as directors and/or officers of said Districts, and that the terms of office for which said directors and/or officers of said Districts, and each of them, was elected have long since expired; that the United States of America, petitioner herein, is the sole and only owner of land within each of said Irrigation Districts, and is the sole and only owner of the properties and operational facilities of each of said Districts, and is the sole and only beneficial owner of all other assets of each of said Districts.

## IV.

That, under orders of this Court, petitioner has paid all the outstanding bonded indebtedness, to-wit: the sum of Ninety-seven Thousand and No/100 [178] Dollars (\$97,000.00), the bonded indebtedness of the Richland Irrigation District, and the sum of One Hundred Seventy Thousand Five Hundred and No/100 Dollars (\$170,500.00), the bonded indebtedness of the Priest Rapids Irrigation District, and is thereby subrogated to all the rights and priorities of the former owners of the bonds, and in substance and equity occupies the position of sole bondholder of the Irrigation District.

## V.

That by virtue of the payment of the bonds under order of Court in this action of the Districts, your petitioner became in equity and substance the sole bondholder of the Districts, and by virtue of the acquisition of all private lands within the Districts in the proceeding became the sole owner thereof, and, as appears from the Memorandum Opinion of this Court, filed June 21, 1945, the adjudication of rights in the assets of the Irrigation Districts and distribution thereof is necessarily involved in this proceeding and this Court has long since acquired jurisdiction of the parties and subject matter.

## VI.

That prior to the institution of this cause, the Districts were the owners and holders of numerous and sundry assets, funds and property, all of which

is now claimed by the United States of America, although the Districts, its de facto officers, representatives, attorneys and former employees are asserting in behalf of said districts, certain claims thereto, as well as the rights to manage, control and expend the monies and assets, all to the serious detriment of the petitioner, and such property and assets are in danger of being dissipated, wasted and jeopardized, and, therefore, a trustee, receiver, or other proper officer of this Court should be appointed and ordered, upon being duly qualified, to immediately take possession and control of each and all of the assets of the Irrigation Districts, all of which should be managed subject to the proper orders of this Court and protected, preserved and conserved, to the end that all rights may be adjudicated herein and all assets distributed under the orders of this Court.

## VII.

Petitioner would further show the Court that subsequent to the institution of this action and subsequent to the ruling of this Court on the particular subject matter of the controversy, by orders of this Court filed June 25, 1945, and Memorandum of the Court filed June 21, 1945, certain parties defendant to this proceeding instituted in the Superior Court of the State of Washington in and for Benton County, a cause of action seeking the aid of that Court to obtain possession, control and management of all of the funds, assets and property of the Richland Irrigation District, which cause is styled,

Ernest H. Dietrich, Ruth Dietrich, Joe E. Millard, D. M. Allen, Henry Deranleau, and Richland Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, against Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, Defendants, a duly certified transcript of the record in said cause of action being hereto attached, marked Exhibit "A", and asked to be considered a part of this paragraph of this motion, and that, also, certain parties defendant in this proceeding instituted in the Superior Court of the State of Washington in and for Benton County a cause of action seeking the aid of that Court to obtain possession, control and management of all the funds, assets and properties of the Priest Rapids Irrigation District, which cause is styled, C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett, and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, v. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, a duly certified transcript of the record in said cause of action being hereto attached and marked Exhibit "B", and asked to be considered a part of this paragraph of this motion.

### VIII.

That as appears upon the face of the complaint filed in the two causes above referred to in the Superior Court of the State of Washington for

Benton County and the record proper in this cause, said Superior Court of the State of Washington is without jurisdiction to adjudicate the interest of this proceeding, and the adjudication of the same in that Court will conflict with this proceeding and involve the parties and subject matter over which this Court has previously acquired jurisdiction and is and was in the process of exercising the same, and that, therefore, each and all of the plaintiffs, their employees, agents and [180] attorneys should be restrained and ordered to cease and desist from the prosecution of these two actions in the State Court.

### IX.

That as appears from the letters from J. K. Cheadle, Attorney for the Plaintiffs in both of the aforesaid State cases, it is the intent of the plaintiffs (defendants herein) in each of said cases, to bring said cases on for hearing or trial on or before the 16th day of May, 1946, and that the entry of judgment and orders prayed for in two said State cases would do irreparable injury to the United States of America and would waste, jeopardize and dissipate the assets of the Irrigation District, and would place the control of said assets in the hands of said State Court.

Wherefore, Petitioner prays the Court:

1. That a trustee, receiver or other officer of this Court be appointed and ordered to take full charge, possession and control of all of the funds, assets and properties of the Richland Irrigation



District and to hold and conserve the same subject to and under the orders of this Court.

2. That a trustee, receiver or other officer of this Court be appointed and ordered to take full charge, possession and control of all of the funds, assets and properties of the Priest Rapids Irrigation District and to hold and conserve the same subject to and under the orders of this Court.

3. That both of said officers should be further ordered to report to the Court within a reasonable time a full inventory of all funds and assets and properties of the said Richland Irrigation District and the said Priest Rapids Irrigation District.

4. That all parties claiming any interest in and to said assets of the Richland Irrigation District and the Priest Rapids Irrigation District be notified to appear herein within a reasonable time and assert the same to the end that all rights may be adjudicated herein and that all persons holding, in possession or control of any of such assets be ordered to immediately deliver the same to the duly appointed and qualified officers of this Court.

5. That the plaintiffs in the two State causes of action above referred to, their officers, agents, employees, representatives and attorneys be ordered to refrain from the prosecution of said actions until such time as this Court shall have ruled in the premises.

6. That the plaintiffs in said two State causes of action, and each and all of them, be restrained



and enjoined from proceeding further in said cases until such time as this Court may bring this matter on for hearing and make and enter herein such orders, judgments and decrees as may be meet and proper in the premises.

BERNARD H. RAMSEY,  
Special Assistant to the  
Attorney General. [182]

State of Washington,  
County of Yakima—ss.

I, Bernard H. Ramsey, being first duly sworn, on oath depose and say: That I am a Special Assistant to the Attorney General in charge of the lands Division office of the Department of Justice for the Eastern District of Washington, and that I make this verification for and on behalf of the United States of America, and that I have read the foregoing Motion for Appointment of Trustee or Receiver and for Restraining Order, know the contents thereof, and that the same is true I verily believe.

BERNARD H. RAMSEY,  
Special Assistant to the  
Attorney General.

Subscribed and sworn to before me this 2nd day of May, 1946.

[Seal] M. C. DELLE,  
Notary Public in and for the State of Washington,  
residing at Yakima.

My commission expires January 8, 1949. [183]

Filed May 6, 1946.

[Letterhead J. K. Cheadle]

Apr. 17, 1946.

April 16, 1946

Mr. Bernard H. Ramsey  
Special Assistant to the Attorney General  
Lands Division, Department of Justice  
520 Miller Building  
Yakima, Washington

Re: Civil No. 128-99, 128-100 and Dietrich v.  
Chapman, in Benton County Court.

Dear Mr. Ramsey:

Enclosed is a copy of my letter to the clerk of the Superior Court in Prosser, transmitting to him for filing the original of the "Order Overruling Demurrer and Denying Motion to Quash and Dismiss."

I am advised by Mr. Powell that he has forwarded to Judge Paul, with a request that he send it on to the clerk at Prosser, the signed stipulation in the federal cases, Judge Black having signed an order in accordance with that stipulation. Accordingly, the time to file answer in Dietrich et al. v. Chapman et al. has been extended to 30 days from March 28, which time, I believe, will expire on April 29.

The defendants having already filed their answer in that action, if the Government should decide prior to April 29 that it will not file any further

pleading therein, I would appreciate being so advised promptly so that hearing on the merits in that action can be expedited.

Sincerely yours,

JKC:jt      /s/ J. KENNARD CHEADLE.

cc—Andrew Brown

April 16, 1946

Clerk of the Court  
Superior Court of the State of Washington  
In and for Benton County  
Prosser, Washington

Re: Dietrich et al. v. Chapman et al.

Dear Sir:

I have to day received from Judge Timothy A. Paul the enclosed "Order Overruling Demurrer and Denying Motion to Quash and Dismiss" in the above entitled action, which Judge Paul signed on April 11, 1946. Please file this order in the above entitled action.

Sincerely yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

[Letterhead J. K. Cheadle]

May 2, 1946

May 1, 1946

Mr. Bernard H. Ramsey  
Special Assistant to the Attorney General  
Lands Division, Department of Justice  
520 Miller Building  
Yakima, Washington

Dear Mr. Ramsey:

Thank you for your letter of April 30 with which you enclosed Suggestion of Interest in the case of Dietrich v. Chapman.

Earlier today I wrote to the Clerk of the Court at Prosser, enclosing a notice of issue of fact and note for trial docket in the Dietrich case. I sent a carbon copy of that letter to you.

Enclosed herewith is a copy of a letter I have just sent to the Clerk of the Court at Prosser re Wright et al. vs. Chapman et al., involving the Priest Rapids Irrigation District. Assuming that Mr. Andrew Brown files answer in that case tomorrow, as he presently intends to do, I hope that the Wright case and the Dietrich case both will be set for trial on May 16.

I assume that the United States, in view of the similarity of the two cases, probably will file a similar Suggestion of Interest in the Wright case. Accordingly, I am advising you of my efforts to have the Wright case as well as the Dietrich case set for trial on May 16 so that you will have ample time to file in that cause.

Sincerely yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

cc—Mr. Andrew Brown

May 1, 1946

Clerk of the Court

Superior Court of the State of Washington

For Benton County

Prosser, Washington

Dear Sir:

This is a followup of my letter earlier today with which I enclosed a notice of issue of fact and note for trial docket in Dietrich et al. v. Chapman et al., No. 7987.

Mr. Andrew Brown of Prosser is attorney for defendants in the Dietrich case, and is also attorney for defendants in the similar action of Wright et al. v. Chapman et al.

I have just been advised that Mr. Brown probably will file an answer in Wright et al. v. Chapman et al. tomorrow; and further, that Mr. Brown would have no objection to both the Dietrich case and the Wright case being set for trial on May 16.

Accordingly, I respectfully request that both of the above cases be set for trial on May 16, 1946.

Respectfully yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

cc—Andrew Brown

Bernard Ramsey

May 2, 1946

May 1, 1946

Clerk of the Court  
Superior Court of the State of Washington  
For Benton County  
Prosser, Washington

Dear Sir:

Enclosed is a notice of issue of fact and note for trial docket in Dietrich et al. v. Chapman et al., No. 7987.

Mr. Andrew Brown, attorney for plaintiffs, accepted service of this notice on April 30 and returned it to me.

I hope that this cause can be brought on May 2 to be set for trial.

Since it is quite possible that another and similar action, Wright et al. v. Chapman et al., could with convenience to Judge Paul and others concerned be tried on the same date, provided the trial date is late enough this month to permit further pleadings in the Wright case—I respectfully suggest that the Dietrich et al. v. Chapman et al. be set for trial on or about May 16.

Respectfully yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

cc—Andrew Brown

Bernard Ramsey



EXHIBIT "A"

In the Superior Court of the State of Washington  
in and for Benton County

No. 7987

ERNEST H. DIETRICH, RUTH DIETRICH,  
JOE E. MILLARD, D. M. ALLEN, HENRY  
DERANLEAU, and RICHLAND IRRIGA-  
TION DISTRICT, a municipal corporation of  
the State of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-  
ton County, Washington, and C. W. NESS-  
LY, County Treasurer of Benton County,  
Washington,

Defendants.

SUMMONS

The State of Washington, to the said Harley E.  
Chapman, County Auditor of Benton County,  
Washington, and C. W. Nessly, County Treas-  
urer of Benton County, Washington, Defend-  
dants:

You are hereby summoned to appear within  
twenty days after service of this Summons upon  
you, exclusive of the day of service, if served within  
the State of Washington; or within sixty days after  
service upon you, exclusive of the day of service,  
if served out of the State of Washington, and

answer the complaint and serve a copy of your answer upon the undersigned at the place below specified, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, a copy of which is herewith served upon you.

J. K. CHEADLE,

Attorney for Plaintiffs.

In the Superior Court of the State of Washington  
in and for Benton County

No. 7987

ERNEST H. DIETRICH, RUTH DIETRICH,  
JOE E. MILLARD, D. M. ALLEN, HENRY  
DERANLEAU, and RICHLAND IRRIGA-  
TION DISTRICT, a municipal corporation  
of the State of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-  
ton County, Washington, and C. W. NESSLY,  
County Treasurer of Benton County, Wash-  
ington,

Defendants.

## COMPLAINT

Complaining of the defendants, the plaintiffs allege:

## I.

That the plaintiffs Ernest H. Dietrich and Ruth Dietrich were on and prior to February 23, 1943, the owners of the following described real property, to-wit:

Northeast quarter of Northwest quarter of Northeast quarter, Section three (3), Township nine (9) North, Range twenty-eight (28) East, Willamette Meridian, containing 10.14 acres.

## II.

That said property was located within the Richland Irrigation District, subject to assessments for said district, received its irrigation water from said district, and said property and the plaintiffs Dietrich, as owners of said property, were entitled to each and all of the benefits, as well as the burdens, of the laws of the State of Washington pertaining to irrigation districts under which the Richland Irrigation District was organized and operated. [185]

## III.

That the Richland Irrigation District did on February 23, 1943, have within its boundaries a total of 10,509.23 acres of land, of which 6,068.69

acres were owned by so-called private landowners such as plaintiffs Dietrich; that the balance was owned by said district; and that said plaintiffs Dietrich were therefore the owners of .167% of all the land in private ownership in said district as of said date.

#### IV.

That said plaintiffs Dietrich sue for the benefit of themselves and all other persons similarly situated, more particularly each and every owner of land in private ownership within the Richland Irrigation District as of February 23, 1943.

#### V.

That the plaintiffs Joe E. Millard, D. M. Allen and Henry Deranleau, were on February 23, 1943, the duly elected, qualified and acting directors of the Richland Irrigation District; and that since said date they have continued to function as directors of said district.

#### VI.

That the plaintiff Richland Irrigation District is a duly organized irrigation district, organized and existing under and by virtue of the laws of the State of Washington, and that C. F. Fletcher is the duly appointed, qualified and acting secretary of said district.

## VII.

That the defendant Harley E. Chapman is the duly elected, qualified and acting County Auditor of Benton County, Washington.

## VIII.

That the defendant C. W. Nessly is the duly elected, qualified and acting County Treasurer of Benton County, Washington. [186]

## IX.

That under the laws of the State of Washington it is the duty of the County Auditor of Benton County, Washington, to issue warrants upon vouchers approved by the Richland Irrigation District, said warrants to be issued on the funds of said district as directed by the vouchers so approved; that it is the duty of the County Treasurer of Benton County, Washington, ex officio treasurer of said district, to pay said warrants from the funds of said district in the hands of said County Treasurer; and that there are sufficient and ample funds of said district in the hands of the County Treasurer of Benton County, Washington, to pay each and all of the warrants requested to be issued by the Richland Irrigation District.

## X.

That said district has approved vouchers and requested the issuance of warrants as follows:





Voucher No.	To Whom Issued	Date Allowed	Amount	Purpose
4545	C. F. Fletcher, Secretary .....	4/3/45	\$255.40	March Salary
4546	Joe E. Millard.....	4/3/45	4.50	Directors' Meeting
4547	H. R. Deranleau.....	4/3/45	4.50	" "
4548	National Bank of Commerce.....	4/3/45	25.00	Rent
4550	C. F. Fletcher, Secretary .....	5/1/45	389.20	Reimbursement Revolving Fund (Withhold. Tax 133.80, Sec's Apr. Salary \$255.40)
4551	Joe E. Millard.....	5/1/45	4.50	Directors' Meeting
4552	H. R. Deranleau.....	5/1/45	4.50	" "
4553	National Bank of Commerce.....	5/1/45	25.00	Rent
4555	C. F. Fletcher, Secretary .....	7/3/45	535.80	Reimbursement Revolving Fund (Sec's. May Salary 255.40, June Salary 255.40, Rent 25.00)
4556	Joe E. Millard.....	7/3/45	4.50	Directors' Meeting
4557	H. R. Deranleau.....	7/3/45	4.50	" "
4559	Harold Fyfe Agency.....	7/3/45	12.50	Secretary's Bond
4560	E. I. duPont deNemours.....	7/3/45	3.63	'43 Telephone Charge
4561	C. F. Fletcher, Secretary .....	9/4/45	280.40	Reimbursement Revolving Fund (Sec's. July Salary 255.40, Rent 25.00)
4562	Joe E. Millard.....	9/4/45	9.00	Directors' Meetings
4563	H. R. Deranleau.....	9/4/45	9.00	" "
4566	C. F. Fletcher, Secretary .....	10/2/45	323.80	Reimbursement Revolving Fund (Sec's. Aug. Salary 136.90, Sept. Salary 136.90, Rent 50.00)
4567	Joe E. Millard.....	10/2/45	4.50	Directors' Meeting
4568	H. R. Deranleau.....	10/2/45	4.50	" "
4570	C. F. Fletcher, Secretary .....	11/6/45	232.70	Reimbursement Revolving Fund (Withhold. Tax 70.80, Sec's. Oct. Salary 136.90, Rent 25.00)
4571	Joe E. Millard.....	11/6/45	4.50	Directors' Meeting
4572	H. R. Deranleau.....	11/6/45	4.50	" "
4574	C. F. Fletcher, Secretary .....	12/4/45	161.90	Reimbursement Revolving Fund (Sec's. Nov. Salary 136.90, Rent 25.00)
4575	Joe E. Millard.....	12/4/45	4.50	Directors' Meeting
4576	H. R. Deranleau.....	12/4/45	4.50	" "



## XI.

That each and all of said vouchers are for the issuance of warrants to pay valid and existing claims against the Richland Irrigation District and its funds but the County Auditor of Benton County, Washington, wrongfully refuses to issue any of said warrants on said vouchers upon the ground that the United States of America, through one of its agents, Bernard H. Ramsey, Special Assistant to the Attorney General, by letter has requested the County Treasurer of Benton County not to pay any warrants for salaries of members of said district's board of directors, for salary of said district's secretary or for legal services for said district, and has advised said County Treasurer that any such payments would be made at his own risk.

## XII.

That the United States of America does not now have and never has had any right, title or interest in or to the funds or monies of the Richland Irrigation District; and that the said wrongful refusal of said County Auditor to issue said warrants is an unlawful interference with the functioning of the Richland Irrigation District, and is in violation of the laws of the State of Washington prescribing the duties of said County Auditor. [188]

## XIII.

That the said Harley E. Chapman, as County Auditor of Benton County, Washington, has wrong-

fully refused, and still wrongfully refuses, to issue the warrants described in paragraph X hereof or any warrants requested by vouchers issued and approved by the Richland Irrigation District.

#### XIV.

That the said C. W. Nessly, as County Treasurer of Benton County, Washington, brought said letter, referred to in paragraph XI hereof, to the attention of said County Auditor and advised said County Auditor that in view of said letter he, said County Treasurer, would not pay said warrants or any other warrants on the funds of said district if the same were issued by said County Auditor, unless and until directed to do so by an order or decree of court.

#### XV.

That on February 23, 1943, a condemnation proceeding, entitled United States of America, petitioner, v. Clements P. Alberts, defendant, Civil No. 128, was commenced in the District Court of the United States for the Eastern District of Washington; and that in its petition for condemnation filed on said date and in the order of said court entered on the same date and granting to the United States of America the right of immediate possession, the property covered by said petition and order included the farm lands and other real properties and improvements owned by the Richland Irrigation District and included the lands of private landowners in said district, including the land owned by the plaintiffs Dietrich and described in paragraph I hereof.

## XVI.

That in April, 1943, and pursuant to said order of February 23, 1943, the said petitioner, the United States of America, took possession of all the property of the Richland Irrigation District covered by said order, except said district's office, diversion works, and [189] main and lateral canals; and that possession of said office, diversion works and canals was taken pursuant to said order on or about November 1, 1943.

## XVII.

That on or about May 19, 1943, the United States of America filed in said Civil No. 128 an amended petition for condemnation, accompanied by a declaration of taking and a deposit paid into court, entitled United States of America, petitioner, v. Clements P. Alberts, Ernest H. Dietrich, et al., defendants, and numbered Civil No. 128-4; that said amended petition and declaration of taking covered said property of plaintiffs Dietrich but did not cover any of said properties of said district; and that by the filing of said declaration of taking the said petitioner took title to said property of plaintiffs Dietrich, which title was described in said amended petition and declaration of taking as follows:

“The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipelines and for existing irrigation ditches, canals and laterals owned by the Richland Irrigation District.”

## XVIII.

That on or about October 10, 1943, compensation for the taking of the said property of plaintiffs Dietrich was determined by a jury in said proceeding No. 128-4. That in the course of said proceeding, on October 8, 1943, plaintiffs Dietrich offered to prove the value of the properties of the Richland Irrigation District, which had been taken by the said petitioner pursuant to said order of February 23, 1943, in order that plaintiffs Dietrich might have said value determined and their proportionate share thereof awarded in their jury trial; that the said petitioner objected to said offer of proof; and that said objection was sustained and said offer of proof rejected, as explained by said court, because in the trial for determining the [190] compensation to be paid for said land of plaintiffs Dietrich, there was no room to try also the value of their proportionate share of said district's properties, also because said plaintiffs Dietrich were not the owners of the legal title to said district's properties and because they had no right to assert a direct claim to their proportionate share, and also in order to avoid the chaos, awkwardness and confusion of numerous determinations by different juries of the value of said district's properties. That said jury trial proceeded in accordance with said limitation on proof; and that the compensation award to plaintiffs Dietrich was exclusively for their real property as herein-above described. That other proceedings against farm tracts of other private landowners in said district proceeded under the



same limitation on proof, in part because of an assurance given by said petitioner in open court that said petitioner would proceed expeditiously to file declarations of taking and have just compensation determined with respect to said properties of said district.

### XIX.

That the said petitioner in said condemnation action, Civil No. 128, in May 1944 filed therein amended petitions and declarations of taking, numbered Civil No. 128-98 and Civil No. 128-100, covering said district properties; and that said district properties have been covered only by the original petition in said Civil No. 128, and by the amended petitions and declarations of taking in said Civil No. 128-98 and Civil No. 128-100.

### XX.

That said petitioner by demurrer to the answer of the defendant Richland Irrigation District in said Civil No. 128-100 is contending and urging upon said court that said defendant district, named defendant by the said petitioner, has no capacity to answer or defend against the amended petition served on it by said petitioner, that said Joe E. Millard, D. M. Allen and Henry Deranleau are not qualified to represent said district and that the said petitioner acquired from the plaintiffs Dietrich and other similarly situated private landowners of property in said district full right, title and interest in

and to all assets of said district, although in the proceedings in Civil No. 128-4 in which said petitioner acquired by condemnation the said land of plaintiffs Dietrich, there was not any proof of or compensation for the value of said district's properties, for the reasons set forth in paragraph XVIII hereof.

## XXI.

That under the laws of the State of Washington legal title to irrigation district properties is vested in the district and such properties are held by the district in trust for the purposes of the irrigation district and for the benefit of the creditors and private landowners of the district; that said relationship of trustee and beneficiaries existed between the Richland Irrigation District and plaintiffs Dietrich on February 23, 1943, with regard to the properties of said district taken by said petitioner's exercise of the power of eminent domain and that said relationship continues to exist with regard to the fund or just compensation for said properties; that said fund stands in the place of said properties and that said petitioner, the condemner, has no interest in said fund.

## XXII.

That plaintiffs Dietrich have an interest in said fund in said condemnation proceeding and have an interest in the success of the defendant Richland Irrigation District in said condemnation proceeding.

## XXIII.

That the equitable administration of the trust of which the Richland Irrigation District is trustee, and the interests of plaintiffs Dietrich, as beneficiaries, are imperiled and interfered with [192] by reason of: (1) the challenge in said condemnation proceeding of the capacity of said district to answer and defend and the challenge in said proceeding of the qualifications of said Joe E. Millard, D. M. Allen and Henry Deranleau to function as directors of said district; and (2) the wrongful action of defendants Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, in refusing to issue and pay said warrants, thereby rendering difficult and interfering with said district's defense against the United States of America in said condemnation proceeding and with said district's general administration of said trust.

Wherefore, plaintiffs pray that this court in the exercise of its equity jurisdiction:

- (1) Take jurisdiction of the trust of which, under the laws of the State of Washington, the Richland Irrigation District is trustee;
- (2) Decree that said Joe E. Millard, D. M. Allen and Henry Deranleau are de facto directors of the Richland Irrigation District; that they shall continue to function as directors of said district and shall do any and all things necessary to defend

against the United States of America in said condemnation action and to protect the interests of said trust; and that pursuant to vouchers approved by them, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay such warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors;

or, in the alternative,

Appoint said Joe E. Millard, D. M. Allen and Henry Deranleau as trustees of the Richland Irrigation District [193] with power to sue and be sued in the name of said district or in their own names as trustees, and with power to do any and all things necessary to defend against the United States of America in said condemnation action and to protect the interests of said trust; and order the County Treasurer of Benton County, Washington, to pay into this court the funds received and held by him as ex-officio treasurer of the Richland Irrigation District, said funds to be available for expenditure by said trustees subject to approval by this court.

- (3) Decree that any award in said condemnation action, United States of America v.

Clements P. Alberts, et al., Civil No. 128, which may be ordered by said district court of the United States to be paid to the Richland Irrigation District, or to said Joe E. Millard, D. M. Allen and Henry Deranleau as trustees, shall upon receipt be paid into this court, to be paid out upon order of this court after further appropriate proceedings;

- (4) Decree that this court retains jurisdiction of this matter for further appropriate supervision of the administration of said trust and for further appropriate proceedings directed toward dissolution of the Richland Irrigation District and distribution of the corpus of the trust;
- (5) Decree that not later than sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings, said Joe E. Millard, D. M. Allen and Henry Deranleau, as directors or trustees as the case may be, shall report to this court the final [194] decision in said condemnation action and shall suggest to this court such further proceedings in this matter as shall be deemed by them to be proper and in accordance with the decree of this court.

/s/ J. K. CHEADLE,

Attorney for Plaintiffs.



State of Washington,  
County of Yakima—ss.

Ernest H. Dietrich, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiff Ruth Dietrich; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ ERNEST H. DIETRICH

Subscribed and sworn to before me this 18th day of February, 1946.

[Seal) M. D. OLMSTEAD,  
Notary Public in and for the State of Washington,  
residing in Grandview.

State of Washington,  
County of Benton—ss.

Joe E. Millard, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiffs D. M. Allen, Henry Deranleau and Richland Irrigation District; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ JOE E. MILLARD

Subscribed and sworn to before me this 15th day of February, 1946.

FLOYCE SMITH,  
Notary Public in and for the State of Washington,  
residing in Kennewick.

Filed February 25, 1946. [195]



[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Summons and Complaint, filed February 25, 1946, in the above entitled action, as the same now appears on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court this 3rd day of May, 1946.

[Seal]

BESS ROYER, Clerk,  
By WILMA OLIVER, Deputy.

## EXHIBIT "B"

In the Superior Court of the State of Washington  
for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, husband  
and wife, B. SALVINI, J. H. EVETT, and  
PRIEST RAPIDS IRRIGATION DIS-  
TRICT, a municipal corporation of the State  
of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-  
ton County, Washington, and C. W. NESSLY,  
County Treasurer of Benton County, Wash-  
ington,

Defendants.

## SUMMONS

To the said Harley E. Chapman, County Auditor  
of Benton County, Washington, and C. W.  
Nessly, County Treasurer of Benton County,  
Washington, defendants.

You are hereby summoned to appear within  
twenty days after service of this Summons upon  
you, exclusive of the day of service, if served out  
of the State of Washington, and answer the com-  
plaint and serve a copy of your answer upon the  
undersigned at the place below specified, and de-  
fend the above entitled action in the court of afore-

said; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, a copy of which is herewith served upon you.

J. K. CHEADLE,

Attorney for Plaintiff.

P. O. Address: Old National Bank Building, Spokane, Washington.

In the Superior Court of the State of Washington  
in and for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, husband and wife, B. SALVINI, J. H. EVETT, and PRIEST RAPIDS IRRIGATION DISTRICT, a municipal corporation of the State of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Benton County, Washington, and C. W. NESSLY, County Treasurer of Benton County, Washington,

Defendants.

Complaining of the defendants, the plaintiffs allege:

I.

That the plaintiffs C. I. Wright and Mamie Wright, husband and wife, were on and prior to

February 23, 1943, the owners of the following described real property, to-wit:

Southeast quarter of Southwest quarter of Southeast quarter, Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26) East, Willamette Meridian, containing 10 acres.

## II.

That said property was located within the Priest Rapids Irrigation District, subject to assessments for said district, received its irrigation water from said district, and said property and the plaintiffs Wright, as owners of said property, were entitled to each and all of the benefits, as well as the burdens, of the laws of the State of Washington pertaining to irrigation districts under which the Priest Rapids Irrigation District was organized and operated.

## III.

That the Priest Rapids Irrigation District did on February 23, 1943, have within its boundaries a total of 15,891.93 acres of land, of which 5731.97 [198] acres were owned by so-called private land-owners such as plaintiffs Wright; that the balance was owned by said district; and that said plaintiffs Wright were therefore the owners of .174% of all the land in private ownership in said district as of said date.

## IV.

That said plaintiffs Wright sue for the benefit of themselves and all other persons similarly situated, more particularly each and every owner of land in private ownership within the Priest Rapids Irrigation District as of February 23, 1943.

## V.

That the plaintiffs B. Salvini and J. H. Evett were on February 23, 1943, the duly elected, qualified and acting directors of the Priest Rapids Irrigation District; and that since said date they have continued to function as directors of said district.

## VI.

That the plaintiff Priest Rapids Irrigation District is a duly organized irrigation district, organized and existing under and by virtue of the laws of the State of Washington, and that R. S. Reiersen is the duly appointed, qualified and acting secretary of said district.

## VII.

That the defendant Harley E. Chapman is the duly elected, qualified and acting County Auditor of Benton County, Washington.

## VIII.

That the defendant C. W. Nessly is the duly elected, qualified and acting County Treasurer of Benton County, Washington.

## IX.

That under the laws of the State of Washington it is the duty of the County Auditor of Benton County, Washington to [199] issue warrants upon vouchers approved by the Priest Rapids Irrigation District, said warrants to be issued on the funds of said district as directed by the vouchers so approved; and that it is the duty of the County Treasurer of Benton County, Washington, ex officio treasurer of said district, to pay said warrants from the funds of said district in the hands of said County Treasurer.

## X.

That plaintiffs are informed and believe that vouchers for the issuance of warrants to pay valid and existing claims against the Richland Irrigation District, an irrigation district of the State of Washington which is in a situation similar to that of the Priest Rapids Irrigation District, and the funds of said Richland District have been presented to the County Auditor of Benton County, Washington, and that said county auditor wrongfully refuses to issue any of said warrants on said vouchers upon the ground that the United States of America, through one of its agents, Bernard H. Ramsey, Special Assistant to the Attorney General, by letter has requested the County Treasurer of Benton County not to pay any warrants for salaries of members of said Richland District's board of directors, for salary of said Richland District's secretary or for legal services for said Richland District, and has advised said County Treasurer that any such payments would be made at his own risk.



## XI.

That the United States of America does not now have and never has had any right, title or interest in or to the funds or monies of the said Richland Irrigation District or of the Priest Rapids Irrigation District; and that the said wrongful refusal of said County Auditor to issue said warrants is an unlawful interference with the functioning of the Richland Irrigation District and threatens an unlawful interference with the functioning of the Priest Rapids Irrigation District, and is in violation of the laws [200] of the State of Washington prescribing the duties of said County Auditor.

## XII.

That the said Harley E. Chapman, as County Auditor of Benton County, Washington, has wrongfully refused, and still wrongfully refuses, to issue any warrants requested by vouchers issued and approved by said Richland Irrigation District; that plaintiffs are informed and believe that said County Auditor will refuse, likewise, to issue any warrants requested by vouchers issued and approved by the Priest Rapids Irrigation District; and that said threatened wrongful refusal to issue warrants threatens an unlawful interference with the functioning of the Priest Rapids Irrigation District.

## XIII.

That the said C. W. Nessly, as County Treasurer of Benton County, Washington, brought said letter,

referred to in paragraph X hereof, to the attention of said County Auditor and advised said County Auditor that in view of said letter he, said County Treasurer, would not pay any warrants on the funds of said Richland District if the same were issued by said County Auditor, unless and until directed to do so by an order or decree of Court; and that plaintiffs are informed and believe that said County Treasurer will refuse, likewise, to pay any warrants on the funds of the Priest Rapids Irrigation District; and that said threatened wrongful refusal to pay warrants threatens an unlawful interference with the functioning of the Priest Rapids Irrigation District and deprives said district of the treasury and the ex officio treasurer provided for irrigation districts by the laws of the State of Washington.

#### XIV.

That on February 23, 1943, a condemnation proceeding, entitled United States of America, petitioner, v. Clements P. Alberts, [201] defendant, Civil No. 128, was commenced in the District Court of the United States for the Eastern District of Washington; and that in its petition for condemnation filed on said date and in the order of said court entered on the same date and granting to the United States of America the right of immediate possession, the property covered by said petition and order included the farm lands and other real properties and improvements owned by the Priest

Rapids Irrigation District and included the lands of private landowners in said district, including the land owned by the plaintiffs Wright and described in paragraph I hereof, and included also similar properties of said Richland Irrigation District.

### XV.

That in April, 1943, and pursuant to said order of February 23, 1943, the said petitioner, the United States of America, took possession of all the property of the Priest Rapids Irrigation District covered by said order, except said district's power plant, power canal and transmission lines; and that possession of said power plant, power canal and transmission lines was taken pursuant to said order on or about October 1, 1943.

### XVI.

That on or about August 26, 1943, the United States of America filed in said Civil No. 128 an amended petition for condemnation, accompanied by a declaration of taking and a deposit paid into court, entitled United States of America, petitioner, v. Clements P. Alberts, C. I. Wright, et al., defendants, and numbered Civil No. 128-43; that said amended petition and declaration of taking covered said property of plaintiffs Wright but did not cover any of said properties of said district; and that by the filing of said declaration of taking the said petitioner took title to said property of plaintiffs

Wright, which title was described in said amended petition and declaration of taking as follows:

“The fee simple title, subject, however, to existing [202] easements for public roads and highways, for public utilities, for railroads, for pipelines and for existing irrigation ditches, canals and laterals owned by the Priest Rapids Irrigation District.”

## XVII.

That on or about October 15, 1943, compensation for the taking of said property of plaintiffs Wright was determined by a jury in said proceeding No. 128-43. That in the course of said proceeding, on October 12, 1943, plaintiffs Wright offered to prove the value of the properties of the Priest Rapids Irrigation District, which had been taken by the said petitioner pursuant to said order of February 23, 1943, in order that plaintiffs Wright might have said value determined and their proportionate share thereof awarded in their jury trials; and the said petitioner objected to said offer of proof; and that said objection was sustained and said offer of proof rejected, as explained by said court, because in the trial for determining the compensation to be paid for said land of plaintiffs Wright, there was no room to try also the value of their proportionate share of said district's properties, also because said plaintiffs Wright were not the owners of the legal title to said district's properties and because they had no right to assert a direct claim to their pro-

portionate share, and also in order to avoid the chaos, awkwardness and confusion of numerous determinations by different juries of the value of said district's properties. That said jury trial proceeded in accordance with said limitation on proof; and that the compensation award to plaintiffs Wright was exclusively for their real property as herein-above described. That other proceedings against farm tracts of other private landowners in said district proceeded under the same limitation on proof, in part because of an assurance given by said petitioner in open court that said petitioner would proceed expeditiously to file declarations of taking and have just compensation determined with respect to said properties of said district. [203]

### XVIII.

That the said petitioner in said condemnation action, Civil No. 128, in May 1944 filed therein an amended petition and declaration of taking, numbered Civil No. 128-99, covering said Priest Rapids Irrigation District's properties; and that said district properties have been covered only by the original petitions in said Civil No. 128, and by the amended petition and declaration of taking in said Civil No. 128-99.

### XIX.

That said petitioner by demurrer to the answer of the defendant Priest Rapids Irrigation District in said Civil No. 128-99 is contending and urging upon said court that said defendant district, named



defendant by the said petitioner, has no capacity to answer or defend against the amended petition served on it by said petitioner, that said B. Salvini and J. H. Evett are not qualified to represent said district and that the said petitioner acquired from the plaintiffs Wright and other similarly situated private landowners of property in said district full right, title and interest in and to all assets of said district, although in the proceedings in Civil No. 128-43 in which said petitioner acquired by condemnation the said land of plaintiffs Wright, there was not any proof of or compensation for the value of said district's properties, for the reasons set forth in paragraph XVII hereof.

## XX.

That under the laws of the State of Washington legal title to irrigation district properties is vested in the district and such properties are held by the district in trust for the purposes of the irrigation district and for the benefit of the creditors and private landowners of the district; and said relationship of trustee and beneficiaries existed between the Priest Rapids Irrigation District and plaintiffs Wright on February 23, 1943, with regard to the properties of said district taken by said petitioner's exercise of the power of eminent domain, and that said relationship continues to exist with regard to the fund of just compensation for said properties; that said fund stands in the place of said properties and that said petitioner, the condemner, has no interest in said fund.



## XXI.

That plaintiffs Wright have an interest in said fund in said condemnation proceeding and have an interest in the success of the defendant Priest Rapids Irrigation District in said condemnation proceeding.

## XXII.

That the equitable administration of the trust of which the Priest Rapids Irrigation District is trustee, and the interests of plaintiffs Wright, as beneficiaries, are imperiled and interfered with by reason of: (1) the challenge in said condemnation proceeding of the capacity of said district to answer and defendant and the challenge in said proceeding of the qualifications of said B. Salvini and J. H. Evett to function as directors of said district; and (2) the threatened wrongful action of defendants Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, refusing to issue and pay warrants on the funds of said district, thereby rendering difficult and interfering with said district's defense against the United States of America in said condemnation proceeding and with said district's general administration of said trust.

Wherefore, plaintiffs pray that this court in the exercise of its equity jurisdiction:

(1) Take jurisdiction of the trust of which, under the laws of the State of Washington, the Priest Rapids Irrigation District is trustee;

(2) Decree that said B. Salvini and J. H. Evett are de facto directors of the Priest Rapids Irrigation [205] District; that they shall continue to function as directors of said district and shall do any and all things necessary to defend against the United States of America in said condemnation action and to protect the interests of said trust; and that pursuant to vouchers approved by them, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay such warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors:

or, in the alternative,

Appoint said B. Salvini and J. H. Evett as trustees of the Priest Rapids Irrigation District with power to sue and be sued in the name of said district or in their own names as trustees, and with power to do any and all things necessary to defend against the United States of America in said condemnation action and to protect the interests of said trust; and order the County Treasurer of Benton County, Washington, to pay into this court any funds received and held by him as ex officio treasurer of the Priest Rapids Irrigation District said funds to be available for expenditures by said trustees subject to approval by this court.

(3) Decree that any award in said condemnation action, United States of America vs. Clements P. Alberts, et al., Civil No. 128, which may be ordered by said district court of the United States to be paid to the Priest Rapids Irrigation District, or to said [206] B. Salvini and J. H. Evett as trustees, shall upon receipt be paid into this court, to be paid out upon order of this court after further appropriate proceedings;

(4) Decree that this court retains jurisdiction of this matter for further appropriate supervision of the administration of said trust and for further appropriate proceedings directed toward dissolution of the Priest Rapids Irrigation District and distribution of the corpus of the trust;

(5) Decree that not later than sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings, said B. Salvini and J. H. Evett, as directors or trustees as the case may be, shall report to this court the final decision in said condemnation action and shall suggest to this court such further proceedings in this matter as shall be deemed by them to be proper and in accordance with the decree of this court.

/s/ J. K. CHEADLE,

Attorney for Plaintiffs. [207]

State of Washington,  
County of Yakima—ss.

C. I. Wright, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiff Mamie Wright; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ C. I. WRIGHT.

Subscribed and sworn to before me this 25th day of March, 1946.

[Seal] JAMES P. SALVINI,  
Notary Public in and for the State of Washington,  
residing in Sunnyside.

State of Washington,  
County of Yakima—ss.

B. Salvini, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiff J. H. Evett and Priest Rapids Irrigation District; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ B. SALVINI.

Subscribed and sworn to before me this 26th day of March, 1946.

[Seal] JAMES P. SALVINI,  
Notary Public in and for the State of Washington,  
residing in Sunnyside.

Filed April 4, 1946. [208]

In the Superior Court of the State of Washington  
for Benton County

No. 8035

C. I. WRIGHT, et ux. et al.,

Plaintiff,

vs.

HARLEY E. CHAPMAN, County Auditor, et al.,  
Defendants.

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington, ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Summons and Complaint, filed April 4, 1946, in the above entitled action, as the same now appears on file and of record in my office.

In Testimony Whereof, I Have hereunto set my hand and affixed the seal of said Court this 3rd day of May, 1946.

[Seal]

BESS ROYER,  
Clerk.

By WILMA OLIVER,  
Deputy.

Filed U.S.D.C. May 6 ,1946.



In the District Court of the United States for the  
Eastern District of Washington, Southern Division.

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Nos. 128-99 and 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

### ORDER TO SHOW CAUSE

To Ernest H. Dietrich and Ruth Dietrich, husband and wife, Joe E. Millard, D. M. Allen, Henry Deranleau, Richland Irrigation District, a municipal corporation of the State of Washington, C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and J. K. Cheadle, their attorney:

You and Each of You Are Hereby Notified and Cited to appear in the above named Court at 9:30 a.m. o'clock on the 14th day of May, 1946, in the courtroom of the Federal Court at Yakima, Washington, then and there to show cause, if any there be, and why said Court should not,

(1) Appoint a trustee and/or receiver or other officer of this Court to take full charge, possession and control of all of the funds, assets and properties



of the Richland Irrigation District and the Priest Rapids Irrigation District, and hold and conserve the same subject to and under the orders of this Court.

(2) Require such trustees, receivers and/or officers of the Court to [209] represent to this Court, within a reasonable time, a full inventory of all funds, assets and properties of said Richland Irrigation District and said Priest Rapids Irrigation District.

(3) Make and enter herein an order or orders herein restraining and enjoining you and each of you, your officers, agents, employees, representatives, and attorneys from further prosecuting in the Superior Court of the State of Washington in and for Benton County and the case of C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, vs. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, Defendants, being Cause No. 8035, and from further prosecution in the Superior Court of the State of Washington in and for Benton County the case of Ernest H. Dietrich and Ruth Dietrich, husband and wife, Joe E. Millard, D. M. Allen, Henry Deranleau, and Richland Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, vs. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly,

County Treasurer of Benton County, Washington,  
Defendants, Cause No. 7987.

Dated this 6th day of May, 1946.

SAM M. DRIVER,

United States District Judge.

Filed May 6, 1946. [210]

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[Title of District Court and Cause.]

### RETURN TO ORDER TO SHOW CAUSE

Comes now J. K. Cheadle, one of the parties to whom this Court on May 6, 1946 issued its Order to Show Cause returnable May 14, 1946; and for himself and for and on behalf of the other parties named in said order, makes this return and responses and show of cause:

#### I.

Petitioner attached to its "motion for appointment of trustee or receiver and for restraining order," and incorporated in paragraph VII of said motion, exhibit "A", described as a transcript of the record in Dietrich, et al., v. Chapman, et al., in the Superior Court of the State of Washington, in and for Benton County; but there was not included in said exhibit "A" a demurrer by defendants, a motion to squash and dismiss by the United States (appearing specially) or the order of the court

denying said demurrer and motion; and copies of the same are attached to this return as exhibit "A", and are hereby incorporated by reference in this return. [211]

## II.

The record in this proceeding, including exhibits "A" and "B" incorporated in paragraph VII of petitioner's said motion and exhibit "A" of this return, show that in several substantial respects the facts pertinent to said motion and said order to show cause are substantially different from the statements contained in petitioner's said motion; and show further that the legal conclusions stated or inferred in said motion of petitioner are inaccurate in so far as they have bearing on the merits of petitioner's motion.

## III.

The records of this Court in this condemnation proceeding, including the aforesaid exhibits, show that with respect to petitioner's said motion the law and the equities are with the defendants and are not with the petitioner.

Wherefore, respondent prays the Court:

That petitioner's said motion be denied in all respects.

/s/ J. K. CHEADLE.

State of Washington,  
County of Yakima—ss.

J. K. Cheadle, being duly sworn, deposes and says: That he is one of the parties named in the above described order to show cause and makes this verification in behalf of himself and the other parties named in said order; that he has read the above and foregoing return and response and show of cause and knows the contents thereof and believes the same to be true.

/s/ J. K. CHEADLE.

Subscribed and sworn to before me this 14th day  
of May, 1946.

[Seal]

THOMAS GRANGER,  
U. S. Commissioner.

EXHIBIT A

In the Superior Court of the State of Washington  
In and For Benton County

No. 7987

No. 99

ERNEST H. DIETRICH, RUTH DIETRICH,  
JOE E. MILLARD, D. M. ALLEN, HENRY  
DERANLEAU and RICHLAND IRRIGA-  
TION DISTRICT, a municipal corporation of  
the State of Washington,

Plaintiff,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-  
ton County, Washington, and C. W. NESSLY,  
County Treasurer of Benton County, Wash-  
ington,

Defendants.

SPECIAL APPEARANCE BY PETITIONER  
UNITED STATES OF AMERICA, UNDER  
MOTION TO QUASH AND DISMISS

Comes now the petitioner, United States of  
America, by and through Bernard H. Ramsey,  
Special Assistant to the Attorney General, appear-  
ing specially and for purpose of this motion only,  
moves the Court to quash and dismiss the above  
entitled proceeding upon the ground and for the  
reason:

1. That the Court is without jurisdiction to enter-  
tain said proceeding.

2. That the United States of America has not consented to be sued or to be joined as a part in this proceeding in this court or in any court of the State of Washington; that the court, therefore, does not have jurisdiction of the United States of America as a party herein.
3. That there is now pending in the District Court of the United States for the Eastern District of Washington, Southern Division, a proceeding entitled United States of America, Petitioner, vs. Clements P. Alberts, et al., Defendants, involving every issue presented to the Court in this proceeding, and in which said proceeding all parties herein are before said United States District Court.
4. That all issues sought to be presented by the plaintiffs through this proceeding can and will be adjudicated by the District Court of the United States for the Eastern District of Washington, Southern Division in said case of United States of America, Petitioner, vs. Clements P. Alberts, et al., Defendants, and that any relief sought by plaintiffs in this proceeding can be afforded to said plaintiffs in said proceeding [213] as is evidenced by the allegation of plaintiff's complaint herein and the certified copy of Motion for Leave to Intervene and Notice of Issue hereto attached and made a part hereof.
5. That the plaintiffs herein are without legal capacity to sue in this proceeding.



6. That no cause of action or suit is stated herein.

UNITED STATES OF AMERICA,  
BERNARD H. RAMSEY,

Special Assistant to the Attorney  
General.

March 28, 1946.

Copy hereof received today.

J. K. CHEADLE.

Filed March 28, 1946. [214]

[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Special Appearance by Petitioner, United States of America, under motion to Quash and Dismiss, filed March 28, 1946, in the above entitled action as the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of May, 1946.

BESS ROYER,  
Clerk.

[Seal]

WILMA OLIVER,  
Deputy.

[Title of Superior Court and Cause.]

DEMURRER

Comes now the defendants and demurr to plaintiffs cause or action for the reason and on the grounds that the complaint herein does not state facts sufficient to constitute a cause of action.

Dated this 5th day of March, 1946.

ANDREW BROWN,

Attorney for the Defendants.

Prosser, Washington.

Filed March 6, 1946. [216]

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[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court for the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Demurrer, filed March 6, 1946, in the above entitled action, and the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of May, 1946.

BESS ROYER,

Clerk.

[Seal]

WILMA OLIVER,

Deputy.

[Title of Superior Court and Cause.]

ORDER OVERRULING DEMURRER AND  
DENYING MOTION TO QUASH AND DIS-  
MISS

The above entitled cause having come on for hearing on the 28th day of March, 1946, upon defendants' demurrer and upon the motion to quash and dismiss, made by the United States of America in its special appearance; and arguments on said demurrer and motion having been heard, the defendants being represented by Andrew Brown, the United States of America by Bernard H. Ramsey, Special Assistant to the Attorney General, and the plaintiffs by J. K. Cheadle; and this Court being fully advised in the premises;

Now, therefore, it is hereby ordered:

That said demurrer be and the same hereby is overruled, and that said motion to quash and dismiss be and the same hereby is denied;

That the defendants shall have ten days from March 28, 1946, to answer the complaint herein; and

That, in accordance with the request of counsel for the United States and the agreement of counsel reached in open court, said time to answer shall be extended, without further order of this court, to thirty days from March 28, 1946, upon the filing herein of a signed copy of a stipulation filed in United States, petitioner, v. Alberts, et al., Civil No. 128-99 and 199, in the District Court of the

United States for the Eastern District of Washington, effectively postponing the hearing therein on the petitioner's demurrers therein.

Done in open court this 11th day of April, 1946.

TIMOTHY A. PAUL,

Judge of the Superior Court.

Presented by:

J. K. CHEADLE,

Atty. for Plaintiffs.

Approved as to form:

ANDREW BROWN,

Atty. for Defendants.

Filed for record April 17, 1946. [218]

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[Title of Superior Court and Cause.]

### CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Order Overruling Demurrer and Denying Motion to Quash and Dismiss, filed for record April 17, 1946, in the above entitled action, as the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of May, 1946.

BESS ROYER,

Clerk.

[Seal]

WILMA OLIVER,

Deputy.

Filed May 14, 1946. [219]

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In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128-99, 128-100

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS RE ORAL  
OPINION UPON CONCLUSION OF AR-  
GUMENTS ON MOTIONS AND DEMUR-  
RERS ON 6/1/46.

Be it remembered:

That the matter of argument of counsel upon motions and demurrers in the above entitled cases came regularly on before the Hon. Sam M. Driver, Judge of the United States District Court for the

Eastern District of Washington, beginning on Wednesday, May 15, 1946, at Yakima, Washington, and resumed on Friday, May 31, 1946, at Spokane, Washington; Mr. Bernard H. Ramsey, appearing as Attorney for the plaintiff; and Moulton & Powell, Mr. Charles L. Powell, of counsel, together with Mr. J. K. Cheadle, appearing for the defendants herein.

Whereupon, after the conclusion of argument of counsel, the Court made the following decision:

The Court: This matter has been so thoroughly and extensively argued with about five hours of argument here in addition to the argument we have had at Yakima, that the Court will merely adopt one side here and it will not be necessary to take a great deal of time in stating the Court's view.

In the first place, I think the motions directed against the state proceedings which the Court took under advisement at Yakima should be taken up first. The Court has gone quite thoroughly into this matter of the Federal Court enjoining proceedings in the State Court, and it seems to me that a Federal Court should not enjoin State proceedings unless it is necessary to protect property that is within the custody of a Federal Court, or to protect proceedings that are an action in rem or quasi in rem. The Federal Statute 28 U. S. C. A. 379 provides that an injunction shall not be issued by the Federal Court to restrain proceedings in State Court except in certain cases arising out of bankruptcy. [220]



There has been a well-defined exception grown up to that statute, another exception other than in bankruptcy proceedings, by judicial decisions, and that is known as the exception in the *res* cases, and is regarded as a rule of necessity to be sparingly applied. I think that is particularly apparent from the recent case of *Tousey vs. New York Life Insurance Co.*, 314 U. S. 119, in which Associate Justice Frankfurter wrote the opinion and detailed the history of this statute, and defined the exception which can be applied to its policy. He pointed out that it is a very well defined public policy announced by Congress in that statute that there shall be as little conflict and as much comity established as possible, at least as far as Federal Courts are concerned.

The only exception that could apply to that statute is the *res* exception. That is where an action in *rem* is brought in Federal Court and the Court will then enjoin any subsequent action or proceedings in State Court which would interfere with the Federal Court's jurisdiction over and control of the *res*.

This particular case which is before the Court is without question an action in *rem*. It is an action brought to condemn certain lands and properties of the irrigation districts and the owners of land within the districts. However, it seems to me that the *res* of this action does not go beyond the particular property which is covered by the condemnation action which is taken under the order of possession and declaration of taking in these cases.

The funds in the possession of the county treasurer, who is ex-officio treasurer of the districts, have not been covered in any way by these condemnation proceedings. They are not covered, as I understand it, by any declaration of taking. It is property that is not part of the res in this Court. That became fairly apparent when the Court asked the question and it could not even be stated what the amount of the funds was that remained on deposit with the county treasurer. And after all we must remember that these irrigation districts are not only corporations of the State of Washington, but they are municipal corporations of the State of Washington, and their officers in a sense are municipal officers of a subdivision of the State of Washington; and it is peculiarly appropriate, it seems to me, that the management of their affairs should be left to the State [221] Court jurisdiction insofar as it may be done without interference with the proceedings in this Court.

I might say this: I think that both sides concede here, or seem to concede at least, that regardless of whether these irrigation districts have been stripped of all of their assets so far as the condemnation case is concerned, other than the bare legal title as has been stated, nevertheless those irrigation districts are legal entities. They have never been extinguished as legal entities, and, certainly, they could not be extinguished because the circumstances have made it impossible to carry on their elections re-elect their directors.

I notice in ruling upon the demurrers of the Government in those state cases the Superior Court Judge for Benton County indicated that he regarded these old directors or holdover directors of these districts as de facto directors of these districts, and indicated that that is what that Court would hold. But, in any event, it seems to me these districts which have been brought into Court through action of the Government would have the right to defend the action of the dissolution; and they should have the right to use funds which are not in this Court as part of the res of these proceedings for the purpose of making that defense. Of course, it will be assumed, and I think should be assumed by this Court, that the Superior Court of Benton County will not properly and will not permit the assets of the corporations which may be under the state court's control to be wrongly used and dissipated improperly, and that that court will not seek to interfere with the res of these proceedings.

For the reasons stated, I do not think further elaboration is necessary. The motions of the Government for appointment of receivers for the irrigation districts and for injunction to restrain prosecution of the actions in the Superior Court of the State of Washington will be denied. As I understand it, there is actually in fact a separate motion for appointment of receiver and for an injunction as to both irrigation districts, there being two cases in Benton County which involve each of these districts.

Mr. Cheadle: Yes, your Honor. Is that not correct, Mr. Ramsey?

Mr. Ramsey: Yes.

The Court: Now, with reference to the demurrers to the amended answers [222] which have been just recently argued before the Court here, I think both sides should be complimented for the manner in which these cases have been presented. They certainly have been thoroughly presented and on the Government's side there is a very strong legal basis for the Government's position. It is a matter of cold logic for the Government's position. The Government's position is almost unanswerable, it seems. But we have here a peculiar situation. If there has been a case before where the Government has taken over the entire irrigation system and all of the lands of the system and all of the works and properties of the district in one stroke, as has been effected here, that case has not been called to the Court's attention.

It seems to me that it is unfortunate that this case having been pending here since February, 1943, over three years, that this basic question, which is a very difficult and trying and unique question, has not been decided by the Circuit Court of Appeals. I am not attempting to place the blame, certainly, but it would surely lighten the burden of this Court and the task of the litigants because it is a very difficult and unique situation that is presented here to me that has grown out of this peculiar situation.

I think that this litigation should be regarded as a whole or, I should say, interrelated as to each irrigation district.



The Government secured its order of possession in February, 1943. I don't think that the Government thereby took possession or that title passed or that that measured the time when the landowners were entitled to the compensation as of the value taking date; but it certainly did indicate very clearly the intention of the United States to condemn all of the lands and facilities of each of these districts and put in motion the machinery by which that was to be done. And regarding this litigation, the condemnation of each district as at least inter-related and a unit in a sense, my predecessor, Judge Schwellenbach, has already carried on or concluded many of the separate trials involving many of these original landowners, all of them except those that have conveyed by deed. In doing that, his memo as indicated by his ruling upon the amended answers clearly indicates that he adopted a certain theory and line of policy and it was tried in the cases involving the original theory and line of policy and it was tried in the cases involving the original owners.

As I read his memo, his conclusion was that the owners of the district, while, of course, the Government is taking only the fee title which includes everything that goes with the lands, that they were in a sense in a dual position, that they owned irrigated land with the water rights appurtenant thereto for which they were entitled to compensation; and that also in a sense as owners of land in the district they were in the position of stockholders in the district, that is, they were entitled to com-

pensation in their proportionate share of the assets of the district. The assets of the district which enter into and are necessary to the supplying of the water to the land, they are what Judge Schwellenbach referred to, I believe, as the irrigation assets or assets adapted to and used for the supplying of water for the lands. They, I assume, Judge Schwellenbach considered entered into and became a part of the value of the land and the Government compensated the owner for that when they paid him the fair market value of the land as determined by the jury.

Judge Schwellenbach also took it, I assume, that as to the assets of the district which were not used exclusively for irrigation, that they did not enter into the value of the land as determined by the jury, that the owner was entitled to his pro rata share as to the value of those properties not used for irrigation.

As a matter of policy and for convenience, if for nothing else, Judge Schwellenbach decided, and I think properly so, that it was not the proper thing to do to try out in each individual case the proportionate value to which each landowner would be entitled. That would involve, as he pointed out, having the assets determined over and over again by the jury in successive individual cases; and, of course, they would in all probability find difference values in different cases. But, as he pointed out in ruling upon the demurrers to the original answers, he felt that while the landowners were not entitled to receive compensation again for the assets of the districts used for irrigation, as that would be in



effect giving them double compensation, he thought that in all fairness they should have their pro rata share of the non-irrigable assets of the districts.

I suppose I am not bound by what my predecessor has done here but, it seems to me that in all fairness, that since this litigation is so far advanced, at least under this situation it is the fair and proper and equitable thing for me [224] to do to adopt and attempt to apply the formula of my predecessor since he has already acted upon it in these individual cases. I don't think it is fair to change the theory or change the method in the middle of this litigation, considering it as a whole. I can see that it will involve grave difficulties and will not be an easy thing to work out but that is a matter and a bridge that will have to be crossed when we reach it, I suppose.

I think if we may apply the formula—if we may call it that—of Judge Schwellenbach, that the demurrers should be overruled.

It is true that in the Richland case there is only a limited amount of property sold there that is not devoted to irrigation purposes and that it does not exceed the amount of the bond issue. But I think also that applying Judge Schwellenbach's formula even in that case the value of the non-irrigable assets of the district should be passed upon and determined by a jury, and then, if that is determined to be the proper thing to do—I am not passing upon that question definitely now—but if it is determined by this Court to be the thing to do, if they amount

to less than the bond issue and can be applied to the payment of the amount advanced by the Government to buy the bonds, it seems to me that at some stage of these proceedings that if the assets are not sufficient to pay what the Government has advanced, to pay off these bonds, that it should be determined definitely how much has been retired by application of the assets here and how much of an excess that the Government is entitled to that it might have a right to recover or which might be a lien upon other assets not involved in this proceeding.

Now. I think I indicated in the ruling on the motions for injunction and appointment of receiver that it is my view that these irrigation districts as defendants in these actions should be represented by those officers whom the state court decides are entitled to represent them; that the matter of liquidation of an irrigation district is primarily a matter for the State Court, and while I appreciate the fact that in a condemnation proceeding not only must the value of the property taken be determined but also the persons who are entitled to receive it, nevertheless, it seems to me, that in this situation the person entitled to receive the compensation is the irrigation district, a legal entity. And if I should attempt to determine who is entitled upon liquidation of that corporation [225] to its assets, I would be simply dissolving an irrigation district in Federal Court, which is not altogether necessary in a condemnation case or a part of it, as I view it. Certainly, if the Government took over the assets of a private corporation, we would not undertake

to pay the award to the stockholders. It would be paid to the corporation even though all of the property of the corporation might be taken in the motion, and it would be the duty then of the corporation to determine who is entitled to its assets; and I think that is the situation here. And, however, while it may not be necessary to say this, I am inclined to the view at this time that while the state court should determine who is entitled to the non-irrigation assets, that the Government should determine whatever award should be made for the payment of the bond issues. And I think also that the funds should be impounded in this court rather than to be paid directly to the directors of the districts or whoever is representing the districts, before the adjudication is made as to who is entitled to receive the funds.

Now, I have stated the Court's view on that for the reason that it seems to me, although I will be willing to hear from counsel for the defendants here if you care to be very brief, that in my view of the situation it would serve no useful purpose to permit individual landowners to intervene because under my theory of it they are represented by the irrigation districts.

Mr. Powell: That is right.

The Court: They have no legal title to the irrigation district property, and only in case that the districts are not legally and adequately represented or they are not properly represented should they intervene. But it would seem that with the adequate representation in these cases that the landowners

are not entitled to intervene, and upon that reason the Court will deny the motion to intervene. I will hear from you.

Mr. Cheadle: In view of the previous ruling of the Court, we do not wish to be heard upon your denial of the motion for leave to intervene.

The Court: I am going to Yakima tomorrow and will be there until about Thursday of next week. If the orders on my various rulings here have not been worked out by that time, I will be back in Yakima, Monday, June the 17th. I have a public utility condemnation case that is starting the 18th but I will be there by the 17th and from then on for probably two or three weeks, so that I would be available for presentation of these orders during those times.

Filed June 4, 1946. [226]

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In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

ORDER FOR DENYING MOTION  
FOR LEAVE TO INTERVENE

This matter having come on regularly in its order to be heard before the above entitled Court, the

petitioner appearing by Bernard H. Ramsey, Special Assistant to the Attorney General, and interveners C. I. Wright and Mamie Wright appearing by and through Charles L. Powell and J. K. Cheadle, their attorneys, and the Court having considered the records and files herein and listened to counsel, and being duly advised,

Now therefore, it is hereby ordered that the motion for leave to intervene in the above entitled action be and the same is hereby denied.

Done by the Court this 26th day of June, 1946.

SAM M. DRIVER,  
District Judge.

Approved:

BERNARD H. RAMSEY,  
Of Attorneys for Petitioner.

Presented by:

CHARLES L. POWELL,  
Of Attorneys for Defendant  
Priest Rapids Irrigation  
District.

Filed June 26, 1946. [227]



[Title of District Court and Cause.]

### ORDER OVERRULING DEMURRER

This matter having come on regularly in its order to be heard upon the demurrer of the petitioner to the amended answer of the defendant Priest Rapids Irrigation District, petitioner appearing by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendants appearing by Charles L. Powell and J. K. Cheadle, their attorneys, and the Court having listened to argument of counsel and having considered the records and files herein, and being duly and fully advised in the law and in the premises,

Now therefore, it is hereby ordered that the demurrer of the petitioner to the amended answer of the defendant Priest Rapids Irrigation District be and the same is hereby overruled.

Done by the Court this 26th day of June, 1946.

SAM M. DRIVER,  
District Judge.

Approved:

BERNARD H. RAMSEY,  
Of Attorneys for Petitioner.

Presented by:

CHARLES L. POWELL,  
Of Attorneys for Defendant  
Priest Rapids Irrigation  
District.

Filed June 26, 1946. [228]



In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division.

No. 128-99 and 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

ORDER DENYING MOTION FOR APPOINT-  
MENT OF TRUSTEE OR RECEIVER AND  
FOR RESTRAINING ORDER

The petitioner's motion for appointment of trustee or receiver and for restraining order having come on for hearing on May 15, 1946, on this Court's order to show cause, the petitioner appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendants appearing by and through J. K. Cheadle, their attorney, and the Court having heard argument of counsel, and being fully advised in the law and in the premises,

Now, therefore, it is hereby ordered that the petitioner's motion in No. 128-99 and No. 128-100 for the appointment of a trustee and/or receiver, and for an order restraining and enjoining the defendants from further prosecuting in the Superior Court of the State of Washington, in and for Benton County, the case of C. I. Wright and Mamie Wright,

husband and wife, and J. H. Evett, B. Salvini and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, plaintiffs, vs. Harley E. Chapman, County Auditor, and C. W. Nessly, County Treasurer of Benton County, Washington, defendants, [229] being Cause No. 8035, and the case of Ernest H. Dietrich and Ruth Dietrich, husband and wife, Joe E. Millard, D. M. Allen, Henry Derauleau, and Richland Irrigation District, a municipal corporation of the State of Washington, plaintiffs, vs. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, defendants, being Cause No. 7987, be and the same is hereby denied.

Done by the Court this 26th day of June, 1946.

SAM M. DRIVER,  
District Judge.

Approved as to form:

BERNARD H. RAMSEY,  
Attorney for Petitioner.

Presented by:

/s/ J. K. CHEADLE,  
Attorney for Defendants.

Filed June 26, 1946. [230]

In the United States District Court for the Eastern  
District of Washington, Southern Division

No. 128-99

THE UNITED STATES OF AMERICA,

Petitioner.

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,  
a public corporation, et al.,

Defendants.

### ORDER FOR JURY VIEW

This matter having come on for trial before a jury, and request having been made that the jury view the property to be valued and involved herein,

Now, therefore, it is hereby ordered that the jury be permitted and authorized to view the property involved in this action.

Done by the Court this 10th day of February, 1947.

SAM M. DRIVER,  
District Judge.

Approved:

J. K. CHEADLE,  
Of Attorneys for Petitioner.

Presented by:

BERNARD H. RAMSEY,  
Of Attorneys for Priest  
Rapids Irrigation District.

Filed February 10, 1947. [231]

[Title of District Court and Cause.]

# RECORD OF PROCEEDINGS AT THE TRIAL

Before: Honorable Sam M. Driver,  
United States District Judge.

## Appearances:

Bernard M. Ramsey, Special Assistant to the Attorney General, of Yakima, Washington; June Fowles, Special Attorney, Department of Justice, of Yakima, Washington; for the petitioner.

Charles L. Powell, of Kennewick, Washington; J. K. Cheadle, of Spokane, Washington; for the Defendant Priest Rapids Irrigation District.

Be it remembered, that on the 10th day of February, 1947, the above entitled cause came regularly on for trial in the above court at Yakima, Washington, before the Honorable Sam M. Driver, Judge of said Court, sitting with a jury.

The Petitioner appearing by Bernard H. Ramsey, Special Assistant to the Attorney General, of Yakima, Washington, and June Fowles, Special Attorney, Department of Justice, of Yakima, Washington;

The Defendant Priest Rapids Irrigation District appearing by Charles L. Powell, of Kennewick, Washington, and J. K. Cheadle, of Spokane, Washington;

Whereupon, the following proceedings were had and done, to-wit: [234]

(A jury of twelve was duly impaneled and sworn.)

The Court: In view of the fact that this action will necessarily involve considerable expense to both sides here, it seems to me that it might be a wise precaution to have at least one alternate. If there is no objection to that the Court will proceed to install one alternate. I think one should be enough, however.

(Whereupon, J. R. Flanagan was duly impaneled and sworn as an alternate juror.)

The Court: I understand that arrangements have been made for the members of this jury to go down on the river and view the premises that are involved in this case, that is, as much of the premises and property of the Irrigation District as it is practical for you to see and that counsel on either side wish to point out to you. This is solely to give you some knowledge and acquaintance with the property that you're to deal with here, and it is to help you when you get the evidence and the testimony, to relate it to this property and know what the witnesses are talking about. The transportation will be provided, and you are to keep together at all times while you're on this trip to see the premises. You will be in charge of the Deputy Marshal, who will point out what you're to look at, and if either counsel [235] wishes you to see something you haven't seen, or wishes to direct your attention to something, he will communicate with you through the Marshal, that is, he'll tell the Marshal what he wants you to see, and he will point it out to you.



You're to keep together and not talk to anybody outside, or talk to the attorneys in the case. You're simply to go down there and look at what is shown to you, and use that knowledge later in connection with the case.

This might be a good time to give you the general instruction it is my duty to give at the outset of a case, and that is, you are to keep an open mind in the case until you have heard all the testimony on both sides. One side must necessarily go ahead, and then the other one. You must keep an open mind through all stages of the trial until you have heard all the evidence, the arguments of counsel, and the court's instructions, and the case has been submitted to you for determination. You are not during any recess of the court and on this excursion to talk between yourselves or to any outsider about it. Of course, that is particularly pertinent to these cases when you're permitted to separate and go home. Somebody might start talking to you about it, and you must tell him you're on the jury and can't discuss the case. I ask you also to avoid reading newspaper [236] accounts of this case, or listen to broadcasts about it. You can read other news and listen to radio news, but keep away from this case. You might be influenced by some reporter's idea of what the evidence was, and we want you to decide the case on the testimony in the court room here.

Is it stipulated between counsel that the view of the premises may be in accordance with the instructions of the court? If either of you have any sugges-

tions I would welcome them at this time. The record may show that the view may be as stated by the Court?

Both Counsel: Yes, your Honor.

The Court: Now, as to the mechanics of the case, when will the transportation be ready?

Mr. Isaacs: Our plan is to feed them. Transportation is ready at any time.

The Court: You don't want them to eat at 10:30, do you?

Mr. Isaacs: Well, it will be 11. It's quarter to 11 now; but there isn't any place to feed them at all down there.

The Court: Well, it is rather an awkward time to eat lunch, even for people who get up early, and I wonder if you couldn't have them meet for lunch some place about 11:30 and then go down after that? [237]

Mr. Ramsey: I might suggest to the Court that it is going to cut the time in which this view can be had considerably if we do that. That would mean we probably wouldn't get out until 12:30.

The Court: I don't suppose it would be practicable to take sandwiches for them?

Mr. Isaacs: That would take longer: It's about a two hundred mile trip, by the time we get back here.

Mr. Ramsey: It will be necessary to go on up the river to the Priest Rapids Power Plant and then back to the pumping plant, and if possible, on down the river further to the canals.

The Court: We can give the jurors an opportunity, then, to telephone home if they want to and tell them they will be gone for the day, and then you

can make arrangements to feed anybody who wants to eat at this time. I think it is best, too, to take the jurors down and bring them back here, and then after you get them back to the Federal Building here they may be excused until tomorrow morning at 10 o'clock, without coming back into a session of court here, but I think they should be kept together until they come back here. The bailiffs will be sworn.

(Whereupon, Mr. Isaacs and Mr. Smith were sworn as bailiffs to take charge of the jury and one alternate juror.) [238]

The Court: I might say here, members of the jury, that it has been quite a long time since this property was taken. What was the date of taking? That's agreed, isn't it?

Mr. Ramsey: Date of Declaration was May 12, 1944, however, I believe the government had taken over the property prior to that date.

Mr. Powell: There are, I believe, two different dates of taking.

The Court: The only thing I am interested in, it has been over two years since the property was taken. There may have been some changes in the property. You will just view it as it is pointed out to you, and either side will have an opportunity to call to your attention any changes that may have been made since the property was taken, so you can take that into consideration later on.

(Whereupon, a recess was taken in this cause until Tuesday, February 11, 1947, at 10 o'clock a. m.) [239]

Yakima, Washington, February 11, 1947,  
11 o'Clock A. M.

(All parties present as before, and the trial was resumed.)

The Court: Gentlemen of the jury, we had some rather novel and difficult questions that arise in this case because of the circumstances of it, and it would be very difficult for you to follow the evidence here and apply the Court's instructions properly unless you were able to take some notes as you go along, as to what these various witnesses will testify as to the value of the different kinds and types of property down there, and for that reason the counsel have stipulated, that is, they have agreed, that you may have pads and take notes in this case. That is something that usually isn't permitted in these trials, although I think it should be. It is expecting you to have super-human memory to expect you to sit here and remember all these witnesses' testimony. I couldn't do it. In this case it is stipulated you may have pads furnished to you and take notes of the testimony as the case is submitted to you, and that you may take these notes with you to the jury room. However, at the recess and during adjournments the bailiff will take them from you and keep them for your use when you [240] consider the case. I think it might be well for you, so you won't have any difficulty getting your own pad back, if you will put your name on the top. The clerk will prepare these for you, and in the meantime, you may proceed with your opening statement.

Mr. Powell: May I approach the bench?

(Whereupon, the following proceedings were had by Mr. Powell and Mr. Ramsey without the presence of the jury and one alternate juror.)

Mr. Powell: I don't know if it makes any difference, but I don't think the jury is in the same order that we selected them yesterday. If counsel is agreeable, I got an extra copy of this, if you want to use it.

(Whereupon, counsel presented the Court with a copy of Washington Laws relating to Irrigation Districts.)

Mr. Ramsey: We each have a copy of that.

The Court: Well, I would like to have this, then.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: My attention has just been directed to the fact that the jurors are not seated in the same order they were yesterday. You should keep your same seats so if we have to refer to a particular juror we can do it.

(Whereupon the clerk called the roll of the jurors [241] and the jurors assumed their proper seats.)

The Court: All right, you may proceed. I might say, I think it is best for the jury not to take notes of either opening statement, neither the defendant's nor the government's, but only the testimony of the witnesses.



Mr. Powell: If your Honor please, counsel, and gentlemen of the jury. In this case, the government, the United States of America, is designated as the petitioner, and the Priest Rapids Irrigation District is designated as the defendant, that is, the principal defendant, and the contest in this case will be between the two. Your duties of course the Court will define to you as being to determine the values of the property that have been taken by the United States.

Now, the evidence that the defendant, the Priest Rapids Irrigation District, will introduce here will be substantially as I will try to detail it to you now, and if you find any variance between my statement to you and the evidence as actually introduced, it is, I assure you, an inadvertence and nothing intentional to mislead you, because my statement is not evidence. We will bring in the witnesses, first, we will, I believe, call Mr. Salvini, who has been on the board of directors of the Irrigation District since 1932, and he will detail to you the nature of the organization of the Irrigation [242] District, that is, it was organized about 1919; it didn't function as an Irrigation District to any extent until 1932, when it acquired the property that you saw yesterday, the power plant and the pumping station and the canals, and started to operate the power plant and the pumping station and to irrigate the lands under the canal.

At that time they irrigated from the canal, and there were individual pumping systems installed there and used there even on lands in the District.

At that time also the District started to sell power commercially, generated at the power plant. Then in nineteen, about thirty four, there were some changes in the number 2 generator in the plant, that is, in the number 2 turbine down in the pit. That is the one that was nearest the door that we went in, and in 1941 there was some difficulty with the generator, that is, something happened to the generator, the number 2 generator, and in 1940 or 1941 a new generator was installed in the number 2 generator. That is the machine that was on the top floor where we first went in. That is the generator, and the floor below, where we looked through the manhole in the number 1 machine. is the thrust bearing, and in the lower floor the turbine is located, the wheels that run the machine. [243]

We will have a witness here who has done considerable engineering work in planning and reconstructing a portion of the power canal, to get the maximum flow of water at the power plant during the low stages of the river. The river as you saw it yesterday, I believe the evidence will show is at almost extreme low water, and that was the reason only one of the generators was being operated. This witness will define to you the methods used in getting the maximum flow of water in the canal at the low stages of the river, and the possibilities of getting a maximum flow during low stages, so that when the head is high, that is, the difference between the water in the canal and at the tail race, that a maximum amount of power may be generated.

We will also have witnesses who will explain how the power plant operates for the benefit of those of you who haven't had the experience of operating or being around a power plant a great deal, and how the power is generated and transmitted, and how it is taken off the line to go to the pumping station, and we will also have evidence to show the operation of the pumps, how they operate, and the amount of water and the lift in connection with the discharge pipe, and the length of the canal and how the distribution system was operated.

Now, I anticipate that there may be a question in [244] connection with how some of these values are to be determined and divided. We will endeavor to introduce the evidence to you in the simplest form we can, to help you analyze it, because we realize that to you people this until yesterday was an entirely strange case, and we will endeavor to illustrate as best we can the various elements that we consider of value in determining the value of this power plant and this irrigation system and this transmission line. We are taking the position that from the headworks of the canal, that is, the intake of the power canal, down to the very end of the distribution lateral system, that there is a value there, a substantial value of the Irrigation District properties, that our experts will place at I believe between half a million and a million dollars, and we will show you the production records of power of the last year of operation of the Irrigation District, and we will show you and endeavor to illustrate to you how the willing, informed buyer would investi-

gate the possibilities of doing further work on this power canal and thus generating additional power, and how that would result, and what the income therefore would be from that work.

The details of the evidence will be also given, I believe, as to the cost, that is, the reproduction cost and the depreciated value of a lot of the items that were [235] there that you saw yesterday. We will endeavor to introduce these in exhibit form that will be easily understood and we will submit, with the Court's and counsel's permission, copies for your examination during the course of the trial. Thank you.

The Court: As soon as the Clerk gets the pads ready we will start with the first witness. I presume it may be stipulated here that the defendant will proceed first with the presentation of its proof of the case, that not having anything to do, however, with the rule of the burden of proof, simply that the defendant will proceed first?

Mr. Ramsey: The government so stipulates.

Mr. Powell: May I ask if it has been agreed as to the date of taking of this property?

The Court: There are several dates, that is, part of it was taken at one time, part of it another. I wonder if we could agree as to those dates here?

Mr. Ramsey: I assume so, your Honor. Frankly, I am not too well informed as to these various dates.

The Court: Well, perhaps we had better just make that a matter of proof, then.

Mr. Ramsey: I think there will be no controversy at all on the matter. It is just simply that I



am not informed as to the particular dates the various pieces were taken over. [246]

Mr. Powell: I think, if your Honor please, if I may state my understanding of the dates, and perhaps Mr. Fuller may be able to corroborate it, that the irrigation system, that is, the pumps, the main canal, and the lateral system, were taken over by the government before the commencement of the irrigation season in 1943.

The Court: Was that about April, 1943?

Mr. Powell: Yes, your Honor, April 1, 1943, and that the possession of the power plant was taken at noon on October 1, 1943.

The Court: Well, if that isn't stipulated it will probably be best to have one of your witnesses so testify. I suppose one of the directors will so testify, and if it isn't to be controverted it will be in the record.

Mr. Ramsey: The government is prepared to stipulate, if the Court please, that the dates mentioned by counsel, that is, April 1, 1943, as to the distribution system, and October 1, 1943, as to the power plant, is the actual dates the government took possession of the properties.

The Court: The record may so show that, and the jury will consider it as evidence. You may call your first witness, then.

Mr. Powell: May I ask if this may be agreeable to [247] your Honor and counsel? Mr. Yeager is here with some records from the Priest Rapids power plant, and it will be calling him a little bit out of order to have him put on production records



of the power plant at this time, but if I could call Mr. Salvini, and have give his first testimony, and then interrupt?

The Court: You may call a witness out of order if you wish to get through with him first, the witness who has the production records.

Mr. Powell: While he's getting them in here, I might call Mr. Salvini.

The Court: Yes, all right.

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B. SALVINI

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is B. Salvini?

A. B. Salvini.

Q. Be sure you speak distinctly enough so all the jury can hear you, Mr. Salvini. Where do you live?

A. I live in Yakima.

Q. And where in Yakima?

A. 107 South 11th Avenue.

Q. 107 South 11th Avenue?

A. Correct.

Q. How long have you lived in Yakima? [248]

A. Since the 19th of May, 1943.

Q. Where did you live before that?

A. At Hanford, Washington.

Q. What did you do at Hanford?

A. Oh, I was farming, mostly.

Q. When did you first move to Hanford?

(Testimony of B. Salvini.)

A. Oh, I moved there around the month of October, 1917.

Q. How many acres of farm land did you have there?

A. Well, about fifty acres that I was farming.

Q. Now, were you connected with the Priest Rapids Irrigation District?      A. Yes.

Q. Are you now?      A. Yes.

Q. What is your capacity now?

A. I'm chairman of the Board of Directors.

Q. And you are a director?      A. Yes, sir.

Q. How long have you been a director of the Priest Rapids Irrigation District?

A. Well, I think it is since 1932; if I remember right, it is.

Q. How long have you been Chairman of the Board?

A. Since that time—no, I was Chairman of the Board I guess it is in '36 or '38. [249]

Q. Where is the Priest Rapids Irrigation District irrigated lands?

A. The land of the Priest Rapids Irrigation District lays down north of the canal that comes out from Coyote, and runs clear down below Hanford, and is in Benton County.

(Whereupon, map of Columbia River and canal was marked Defendant's Exhibit No. 1 for identification.)

Q. Mr. Salvini, I hand you defendant's Identification number 1, and ask you if you know what it is?      A. Yeh, that's a map of—

(Testimony of B. Salvini.)

Q. Just state yes or no. A. Yes.

Q. And what is it?

A. Well, it is a map that shows contour of the Columbia River up here from up above the power house at Priest Rapids clear down below Hanford, and some of the section land laying from Priest Rapids clear down to below Hanford, that is south of the canal.

Q. Does it show the main canal?

A. It shows the main canal, the existing canal that there was there in 1943, from Coyote Rapids down to the end of the canal, down below Hanford.

Mr. Powell: We offer the identification in evidence.

Mr. Ramsey: May I ask the witness one question first? [250]

Mr. Powell: Yes, surely.

Mr. Ramsey: Does it also show the location of the Priest Rapids power plant and of the pumping station?

The Witness: Yes.

Mr. Ramsey: By which the water was pumped on to the land of the Priest Rapids Irrigation District?

The Witness: Yes.

Mr. Ramsey: No objection to the exhibit, except as to the legend appearing on the lower left hand corner. I have no objection to the scale appearing in the lower right hand corner, but I do object to the legend appearing on the lower left hand corner.

The Court: May I see it, please?

(Testimony of B. Salvini.)

Mr. Powell: I think that can be removed; that is perfectly all right to remove that, your Honor.

The Court: The defendant's identification 1 will be admitted with the understanding that the Clerk will remove the legend appearing in the lower left hand corner of the map.

(Whereupon, Defendant's Exhibit No. 1 for identification was admitted in evidence.)

Mr. Powell; Now, may I ask leave to call Mr. Yeager out of order at this time?

The Court: Yes, you may do that. [251]

(Whereupon, the witness Salvini was temporarily excused from the witness stand.)

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SILAS E. YEAGER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is Silas Yeager?

A. Yes, sir.

Q. Where do you live, Mr. Yeager?

A. At Priest Rapids.

Q. And what do you do there?

A. In the capacity as an operator of the hydro-electric station.

Q. Will you speak just a little louder, please? You're an operator for the Pacific Power and Light Company?

A. That's right.

(Testimony of Silas E. Yeager.)

Q. And you operate the Priest Rapids Power Plant?

A. That's right.

Q. Who is the chief operator there?

A. At the present time there isn't any chief operator. Whoever is on shift at the time is the chief.

Q. By whom are you now employed?

A. Pacific Power and Light Company.

Q. How long have you been an operator of the power plant?

A. On May 14 it will be six years.

Q. Then you started in May, 1941? [252]

A. That's right.

Q. Have you resided there all the time?

A. Since May 14, 1941.

Q. And what does an operator of a power plant like that do?

A. Well, he has various work. He's responsible for the condition and operation of the machines. He's responsible for the load, and he's responsible for the general appearance and condition of the place.

Q. Do you read the meters? A. Yes.

Q. What meters are they?

A. They are kilowatt hour meters, ampere meters, and volt meters.

Q. Where are they located?

A. Kilowatt hour meters are located on the back of the instrument boards, and the ampere meters and volt meters are located on the front of the panel.

Q. Do you make any other readings?



(Testimony of Silas E. Yeager.)

A. Yes, we read the river elevation gauge and the canal elevation gauge, of the fore bay and the tail race.

Q. What do you do about the gates?

A. The gates?

Q. Yes.

A. While we're operating under normal conditions the gates and the generators are operated under what we call a locked load. [253]

Q. Under a what?

A. A locked load, a locked generator. The generators are set on a load stop. They come open to so far, but if a breaker opens and the speed of the generator increases that automatically closes the governor, or shuts the governor down, and that closes the gates, and it is the operator's job to see that we're back on the line as soon as possible.

Q. Now, there are three sets of gates, aren't there?

A. Yes, head gates.

Q. There is a head gate, is there, in the canal?

A. There's no head gate in the canal.

Q. No, I mean there is a gate at the end of the canal, before the water gets into the canal?

A. That's right.

Q. What is that?

A. That's what we call a head gate.

Q. And how is it operated?

A. By a direct current motor on a mechanism that raises the gates on a worm gear, and they can be operated by manual labor, or they can be raised and lowered by this direct current.

(Testimony of Silas E. Yeager.)

Q. And is there a gate below the power house too, in the power house? [254]

A. At the turbines.

Q. Is there a gate below the turbines?

A. No.

Q. There is no gate below the turbines?

A. No gates below the turbines.

Q. Where is the second set of gates?

A. Well, the first gate is the one that comes in where the water enters from the fore bay into the turbine flume. At that particular station they have what they call open flume turbines.

Q. Are those the big pits we looked into yesterday?

A. That's the big pits you looked into yesterday, and they have what is known as wicket gates on the turbines.

Q. Is that what the governor controls?

A. That is what the governor controls.

Q. So when the governor shuts down the generator, it closes these wicket gates and doesn't let so much water in? A. That's the idea.

Q. And that's what you have to watch, too?

A. That's practically automatic. The principal thing you have to do, when those gates are once closed, that you are to open them and see the governor—that is, open them so you can get your speed, or once you're synchronized to the line, you can open your gates and increase your load.

Q. And are there another set of gates? [255]

A. That's all.

(Testimony of Silas E. Yeager.)

Q. Now, when you first started in at the power plant in 1941 were two generators in operation then?

A. There was not.

Q. And what was being done with one of the generators?

A. There was one generator in operation, and there was a new generator being installed.

Q. A new generator being installed?

A. That's right.

Q. In 1941? A. In 1941.

Q. Which was the new generator?

A. It is the generator, G. E., General Electric, designated as number 2.

Q. That is number 2 generator? A. Yes.

Q. Where is that with reference to the door, as you enter the power plant?

A. Just on the right as you enter the big door.

Q. And you call the other generator, the one on the north or west end, the number 1? A. Yes.

Q. And that is what kind?

A. Allis Chalmers.

Q. Allis Chalmers. Have you been down in both of these pits, Mr. Yeager? A. Yes, sir [256]

Q. Have you inspected the machinery inside?

A. Yes, sir.

Q. And did you during the year 1943?

A. During the year 1943? Yes.

Q. You did inspect the turbines and the wicket gates in both pits? A. Yes.

(Testimony of Silas E. Yeager.)

Q. What was the condition of them at that time?

A. They were in operating condition.

Q. Well, were they—did they show, or did you notice, or was there evidence of any wear?

A. Nothing to exceed any more than normal wear. They weren't new; after being used for several years, why, they couldn't be new, so they would have to show some wear.

Q. They did show some wear?

A. Some wear, but nothing that needed repair, that is, so far as the wheels are concerned.

Q. By wheels you mean the water wheels inside the turbines? A. That's right.

Q. Can you get inside of them and see them?

A. You can get inside of one of them, the number 2 machine.

Q. And can you see the other one from the outside? [257]

A. Yes, you can see the other one from the outside, that is, being down right alongside the turbine you can see it when the gates are open.

Q. Now, did you—were you there when they first put the number 2 generator into operation?

A. Yes.

Q. How did it operate?

A. On June 20 that machine was started, and it run for, I don't remember whether it was put on the line, I don't think it was put on the line. It was for a test run, it was run idle. They were shut down for the reason that they was mis-aligned at the time it was put in, so they made a re-adjustment on the

(Testimony of Silas E. Yeager.)

alignment of the generator, on the bearing, and it was put into operation on the last part of June or the first part of July, I can't give you the exact date.

Q. That is 1941? A. That is 1941.

Q. Has it been operating since that time.

A. It has.

Q. And what about the other machine? Has that been operating continuously also?

A. No, it hasn't been operating continuously. It's been operating continuously at any time that we have water to operate it. [258]

Q. And the number 1 generator was shut down yesterday. Why was that?

A. Insufficient water.

Q. Insufficient water? A. That's right.

Q. And can you just explain why it is that when there is insufficient water you have to shut down the generator?

A. When the river is at a low stage, it will not come in the head of the canal, we have a gravity flow canal, and if there was any provisions, they're not there now, for the water to come into this canal, just whatever comes in from the river; when the river reaches a low stage, the canal is at such an elevation that it just won't come into the canal.

Q. Can you state whether, when the jury saw the river and the canal yesterday, whether the water was at the low stage? A. Not at extreme low.

Q. How low is extreme low stage?

A. Your extreme low would be an elevation of about 407.6.



(Testimony of Silas E. Yeager.)

Q. 407.6? A. That's right.

Q. That is on your reading in the river, is that right? A. That is the reading in the river.

Q. And what does that mean? [259]

A. That is feet above sea level.

Q. And is that the elevation that's extreme low water of the surface of the river below the power plant?

A. The surface of the river at the breakwater, just above the power plant.

Q. Is that higher or lower than the water in the tail race?

A. That's higher than the water in the tail race.

Q. And what was the reading yesterday? How far were you from extreme low water?

A. Yesterday, if I remember right, the elevation of the river was 409.10.

Q. So, then, you're about a foot and a half from extreme low water right now, is that right?

A. That's right.

Q. And how often do you make these readings?

A. We read the river gauge three times a day, at midnight, at eight in the morning, and at four in the afternoon.

Q. How often do you read the canal level?

A. Every hour.

Q. There is a measuring board in the canal, is there not? A. That's right, in the fore bay.

Q. What do the figures on that indicate?

A. That's plus 400; the numbers on that gauge plus 400 is above sea level.

(Testimony of Silas E. Yeager.)

Q. The top number on the board was, I [260] believe, 45, is that correct?

A. I believe so.

Q. And that line is supposed to represent 445 feet above sea level? A. That's right.

Q. Now Mr. Yeager, have you had any difficulty of operating either of these generators? That is, do they operate all right now? A. They do.

Q. And is there anything wrong with this number 1 generator?

A. There is nothing wrong with the number 1 generator.

Q. And is there anything wrong with the wheel inside, that is, the turbine? A. No.

Q. What about the number 2?

A. There is nothing wrong about that either. It was operating when I left the station this morning.

Q. Is that the same situation that existed in 1943?

A. That's the situation in 1943, except that number 1 generator was not running, and it was no fault of the generator that it wasn't running.

Q. I see. Do you know what changes have been made in the power plant since 1943? A. Yes.

Q. What changes have been made? [261]

A. There has been one new governor added, or replaced, the original governor on the number 1 machine, and the wiring in the station has been changed to some extent, that is, the local or the 2300 volt feeder has been changed, that is the local, and I guess that—except for the water system, there has been added for domestic use a chlorinator.

(Testimony of Silas E. Yeager.)

Q. What about the water system—is that a very big change?

A. Well, it was. Before we drank the water out of the canal. Now the personnel can drink pure water, as pure as chlorine can make it.

Q. Now you have a chlorinator there?

A. That's right.

Q. That you use to chlorinate the drinking water you get out of the canal?

A. That's right.

Q. What kind of a governor was there on the number 1 generator in 1943, before the change?

A. Well, I can't say as to exact name plate; there was no name plate on it, but presumably it was an Allis Chalmers.

Q. And now what kind of a governor do you have?

A. A Woodward.

Q. W-o-o-d-w-a-r-d?

A. That's right.

Q. And is that the same kind of a generator you have in both machines? [261]

A. Governor, you mean?

Q. Governor.

A. Yes.

Q. Now, Mr. Yeager, do you have your records here showing the readings of the gauge in the river?

A. Yes, I have.

Q. Can you give us the readings of that gauge for the years of 1944, 1945, and 1946?

A. I believe so. I can give it for 1945 and 1946, and part of 1944, I am sure.

Q. And you also have your records showing the meter readings so that you can give us the production of power at the plant?

A. Yes.

(Testimony of Silas E. Yeager.)

Q. What records is it that you have?

A. I have the record from October 1, 1941, until the present date, and that was since the Pacific Power and Light Company took over, and I have a few records for the year of 1940, 1939, and 1936 and '35 and '34.

Q. Do you have the '42 and '43 log sheets?

A. No, I haven't.

Q. Did you make entries on those log sheets yourself? A. Yes.

Q. Would you recognize the log sheets if you saw them now? A. I would. [262]

Q. The records that you have brought here today, Mr. Yeager, are in whose handwriting?

A. They're in the operator's handwriting.

Q. Does your handwriting appear on them?

A. On some.

Q. And are they original records? A. Yes.

Q. And when were the entries on them made?

A. On the daily log sheet, was made hourly.

Q. Would you get, please, Mr. Yeager, the log sheet which shows the river gauge readings? You have it here in the courtroom, haven't you?

A. Yes.

Q. Would you come down from the stand and get it, please?

(Whereupon, the log sheet consisting of two pages was marked Defendant's Exhibit No. 2 for identification.)

(Testimony of Silas E. Yeager.)

Q. All right, Mr. Yeager, the readings start when?

A. The river elevation we have that I have here starts on the 25th of May, 1944, and they run through until February 10th, which was yesterday.

Q. Now, in the book that you have, the records are made daily, are they not? A. Yes. [263]

Q. And is there an entry there showing the maximum and the minimum river elevations?

A. Yes, there is.

Q. And the average river level during the day?

A. Yes.

Q. Now, does your record also show the day on which the maximum occurred, and the day on which the minimum occurred?

A. No, in this book here shows only the average level for the day; that is, the river. It shows a maximum of the month, for the month, but not for the day.

Q. That's what I mean, a maximum for the month, and a minimum for the month?

A. Yes.

Q. It shows that, does it, and also the average?

A. Yes.

Q. For the month? A. Uh huh.

Mr. Ramsey: May I inquire whether it is the purpose of counsel to introduce the records as to the river levels for the years 1942 and 1943?

Q. I don't think they are available, are they, Mr. Yeager? A. The river levels for 1942?

Q. And 1943? A. No. [264]



(Testimony of Silas E. Yeager.)

Q. When did you start keeping this record?

A. This record was started in May, 1944.

Mr. Ramsey: There have been no records kept of the river levels prior to that time?

A. Not that I know of. There may have been, but I can't vouch for those.

Q. (By Mr. Powell): Will you take your book Mr. Yeager, and start with the month of June, 1944, and give us the maximum for the month, and the day on which it occurred?

A. The maximum for the month of June occurred on the 17th of June, and the maximum elevation was 410.3.

The Court: What was that number?

A. 410.3.

Q. Well, what does that mean, 410?

A. 410 feet, and three-tenths of a foot above sea level. That's 410 feet and then three-tenths of a foot.

Q. That was a foot and what?

A. A foot, and a little over three inches.

Q. Isn't there a correction to go with that figure, Mr. Yeager?

A. Well, I don't believe there is. What do you mean by correction?

Q. Well, may I ask if that is the reading from the gauge?

A. That is the reading from the gauge, yes. All these entries here is plus 400 feet. We just [265] took the actual gauge reading, there is 400 feet added to it, that we don't put down, of course.

Q. Is that at the intake?

(Testimony of Silas E. Yeager.)

A. No, that's the river reading. That elevation was given to us by the U.S.G.S.

Q. Let's turn to the month of July, Mr. Yeager. What was the maximum during the month of July?

A. The maximum river?

Q. Yes. A. It was 407.8.

Q. And what was the minimum during the month? A. The minimum? 403.9.

Q. That is a lower figure than you've given us for the low river readings. A. Couldn't be.

Mr. Powell: Well, if I may make a statement to counsel and your Honor, when I investigated this, it was my understanding that these readings had to be corrected by adding a certain figure. At this particular time the witness's figures do not agree with my tabulation.

The Court: Is this supposed to be the same figure that you said yesterday was 409.1?

Mr. Powell: Yes, and at almost extreme low water.

The Court: It shows lower in June and July than it was yesterday, then, according to his figures?

A. There is an error [267] here, that's right. Now, to these gauge readings here that is in this book to a certain time should be 407.25 added to it.

Mr. Powell; Now, I will ask you, I don't believe we'll finish before noon, during recess will you take this tabulation, defendant's identification 2, and compare it with your book, and determine whether the tabulation is correct?

The Court: Yes, he can do that during the recess, and get it straightened out.

(Testimony of Silas E. Yeager.)

Direct Examination

(Continued)

Q. Now, Mr. Yeager, do you have the meter readings at the power plant for the years, by months, for the years of 1942, '43, '44 and '45?

A. I have the meter readings that I could vouch for from 1943.

Q. From 1943 on? A. On up, yes.

Q. And would you recognize the daily log sheets for 1942, Mr. Yeager? A. Yes.

Q. I hand you the log sheets, and if your Honor please, if counsel has no objection, I see no reason to burden the record with these original entries. There is a sheet for every day of the year, and we have a take-off by months which I think will serve our purposes. [267]

Mr. Ramsey: May I ask who prepared the take-off?

Mr. Powell: I can't tell you now, but I'll find out. I'll be glad to have it compared.

A. (Witness): This is the only record that there is of the operation of the District.

Q. (By Mr. Powell): That is the original record?

A. That is the original record, and as far as I know, the only record.

Q. Does your name appear on that sheet?

A. It does, sir.

Q. And approximately how many sheets does it appear on?

(Testimony of Silas E. Yeager.)

A. It should appear on every sheet.

Q. You were working seven days a week, were you?      A. That's right.

The Court: That is a record of power production is it?

Q. Yes, is that right, Mr. Yeager?

A. Yes.

Q. This shows the power produced at the plant?

A. That is right.

The Court: Where records are as voluminous as this, you can introduce compilations, if you show they are correct compilations, and you made them, as I understand it, rather than burden the jury with all this detail. [268]

Q. What do these sheets show, the log sheets show, Mr. Yeager?

A. They show the line voltage, they show the kilowatts that went out on the 69,000 line, and they show the amperage, the alternating current amperage of the number 2 generator, and they show, this one in particular shows the kilowatt hours metered from the number 1 generator, shows the exciter direct current amperes and the voltage of the exciter, and then it shows the Coyote—wait a minute—it shows the transformer meter, and that is by the hour, and then at midnight it shows the meter readings of each meter that was read in the station, that is the kilowatt hour meter.

Q. Now, how many different meters are there?

A. There are—you mean kilowatt hour meters?

Q. Kilowatt hour meters.

(Testimony of Silas E. Yeager.)

A. There's four different kilowatt hour meters.

Q. What are they?

A. There is the kilowatt hour meter that is on the 6900 transformer, that registers the amount of kilowatts that goes out on the 6900 highline, and there is the kilowatt hour meter that registers the production of each generator, the number of kilowatts each generator generates, and there is the kilowatt hour meter that feeds to Beverly, that's on a 6600 kilowatt, or 6600 watts. [269]

Q. Four meters?

A. Yes, there's five, there's one on each generator.

Q. One on each generator makes two?

A. Yes.

Q. And then your over-all meters.

A. Then your 6900 kilowatt meter, and then your Beverly meter, and then we have what they call an "in" meter, that registers the kilowatts fed into the station, if any comes in.

Mr. Powell: Now, I might state to counsel and your Honor that mention is made here of the Beverly Line. It is my understanding that the Beverly line is not involved here, that the Pacific Power and Light owns the line that runs from Priest Rapids to Beverly, and there is a tower that goes across the river just out of the plant; that's correct, isn't it?      Witness: Yes.

The Court: All right.



(Testimony of Silas E. Yeager.)

Direct Examination

(Continued)

Q. Can you tell from the records you have there the total number of kilowatt hours by months produced by the Priest Rapids Power Plant in 1942?      A. Yes.

Q. From that record you have there?

A. Yes. [270]

Q. And so that you may testify about it personally, could you compare that and give it to us?

A. Yes.

Q. Now, do you have the same record for 1943, or '44, '45 and '46?      A. At——

Q. I mean, you have them for 1944, 1945 and 1946?

The Court: You want similar compilations for those years, is that correct?

Mr. Powell: Yes, your Honor.

The Court: If this is a convenient place to stop, we'll recess now until 1:30.

(Whereupon, a recess was taken in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 11, 1947

1:30 o'Clock p.m.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Ramsey: If the Court please, before the jury comes in, I simply want to have my engineering witness [271] sit at the counsel table with me. Counsel has no objection, and my knowledge of engineering matters is so limited that I would like to have the benefit of his knowledge.

The Court: I see no objection to that, at both counsel tables. Each one of you can have one or two engineering witnesses with you. You may bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

SILAS E. YEAGER

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Mr. Powell: Before the noon recess, your Honor, I believe we were going through the record to show the river elevations.

The Court: Yes.

(Testimony of Silas E. Yeager.)

Mr. Powell: I would like, if I may, to have Mr. Yeager identify the book, and then have a tabulation made of some more data that appears in the book, and that will save introducing the book in evidence.

Mr. Ramsey: The government has no objection to that procedure, your Honor. I assume that will be connected up by a statement of who makes the tabulation [272] from this particular source.

Mr. Powell: Yes.

Direct Examination  
(Continued)

By Mr. Powell:

Q. I hand you again the book containing the information which you testified to, Mr. Yeager. Does that contain also additional information about water stages? A. How's that?

Q. Does that also contain additional information about stages of the canal and the water in the tail race?

A. It contains the elevation of the canal at the fore-bay, and it also contains the tail race elevation and the operating head, in this book, as an average for the twenty-four hours.

Q. Now, you say the fore-bay? A. Yes.

Q. That's the water in the canal?

A. That is the water in front of the trash racks at the head gates.

Q. At the power house?

A. At the head gates in the canal.

(Testimony of Silas E. Yeager.)

Q. And the other reading you refer to is the water in the tail race?

A. In the tail race, as it comes out from the draft race in the turbines.

Q. And the difference between the two is called what?      A. The head, the operating head. [273]

Q. The operating head?

A. That's what we call it.

Q. And the entries in the book are made by you and the other operators?      A. That's right.

Q. I believe you have previously identified the sheets designated as referring to the year of 1942?

A. Yes.

Q. Would you glance through them to be sure that they all refer to that same year?

A. Yes, they're all dated 1942, or those that I look at, each month.

Q. Will you refer to the sheets indicating the year 1943, Mr. Yeager?

A. They're 1943, to October 1.

Q. Until October 1?      A. Yes.

Q. Those are the sheets, are they, for the two years of '42 and '43 up to October 1, that show the meter readings?

A. That shows the meter readings.

Q. What does that show with reference to the output of the plant?

A. That shows the current, or kilowatt hours, that went out on the 66,000 K.V. line, and it shows the revenue or [274] kilowatt hours that went out on the Beverly line, or Beverly feeder, and it also shows the amount of power that was used at the

(Testimony of Silas E. Yeager.)

Priest Rapids station, and it also shows the current generated by the different—each of the generators in the plant.

Q. Does it also show the power that was used for pumping during the irrigation season?

A. It does on some, not all of them. Any time that Coyote was pumping it will show on these vouchers.

Q. Would you mind referring to the year of '42, to ascertain whether it does show during the irrigation season?

A. Yes, it does, starting on April 30, and that will run through until about the first of September, along in there. It shows through from the 30th of April, when they started the Coyote pumps, until they were finished pumping and was shut down for the season on September 1st.

Q. Now, Mr. Yeager, I'm handing you four different packages of sheets. Would you mind telling what they are?

A. They're the daily log sheets of the Pacific Power and Light Company after it took over operation at Priest Rapids.

Q. That is, from October 1, 1943, on, is that correct?

A. That's right.

Q. And what do they show?

A. They show the kilowatt hours on the 66 K. V. line, and [275] they show the output of power that goes to Beverly, then it shows a net, the kilowatts that go on the 66,000 K. V. line, plus what goes to Beverly, and it shows what we used as a station service, and it shows the river level, the river eleva-



(Testimony of Silas E. Yeager.)

tion, the canal elevation, and the tail race, and also the head. It shows bus voltage frequency, direct current amperage, and direct current voltage, and it shows the alternating current amperage, and it shows what each generator generates during the hour, the meter readings, and the different—I'll retract that; it doesn't show of each generator, just only when them generators are running, but it shows the meter readings per hour each hour, and then it shows the weather conditions and whatever comes up in the normal operation of the station.

Q. Then you can tell from the sheets that have been kept as a daily log sheet since October 1, 1943, the total power output from the Priest Rapids plant, is that correct? A. Yes.

Q. And also—well, there was no power used at Coyote during that time, was there?

A. No, not after the company took over.

Q. And do you know who prepared those records? A. The operator.

Q. And you were one of them, were you? [276]

A. I was one of them.

Q. Do you recognize those as being the original sheets that were made up at the time?

A. Yes, they are.

Q. Just glance through them all; you don't need to look at each one individually, but if you will just glance through them to be sure they are the originals?

A. Yes, I would say those are the originals.

Mr. Powell: That's all, your Honor.

(Testimony of Silas E. Yeager.)

Cross-Examination

By Mr. Ramsey:

Q. Mr. Yeager, you stated you were an employee of the P. P. & L. Company? A. Yes, sir.

Q. Now, is the Pacific Power and Light operating the Priest Rapids plant as owner, or on lease, or on behalf of, as an agent for someone else?

A. Well, I could only answer that on hearsay.

Q. Well, as a matter of fact you know, don't you?

A. Not being in an office end of it, why, I would only know from hearsay, and I would say on contract, that is, they leased the station.

Q. I didn't understand your statement.

A. They leased the station, rent the station.

Mr. Powell: They leased the station.

Q. Now, as a matter of fact, they're operating that for the [277] United States Government as contractor, aren't they? Aren't they operating under a contract for the United States Government?

A. The way I understand it is that they rent the station and they pay so much rental for it.

Q. At the time that you took the station over there, that is, at the time the P. P. & L. took over the station, which I believe you stated was October 1, 1943, is that right, that the P. P. & L. took over the station? A. Yes.

Q. You were there earlier than that, in May, 1943? A. 1941 I went there.

(Testimony of Silas E. Yeager.)

Q. Or '41, yes. Now, you stated that there were certain changes made there, one governor was added? A. One governor was replaced.

Q. And why, if you know, was the governor replaced? A. How's that?

Q. Why was the governor replaced, if you know?

A. The reason the governor was replaced, the old governor was wore out, or the engineers figured it was.

Q. That was the governor that was turned over with the plant? A. Yes.

Q. There was some change in the wiring. Why was that done? A. For matter of safety. [278]

Q. What was the condition of the wiring in the plant at the time it was taken over?

A. It was open wiring.

Q. Open wiring; and the P. P. & L. considered that was dangerous? A. How's that?

Q. And the P. P. & L. considered that was a hazard. A. Yes.

Q. Which required that it be re-wired. You said there was some change made on the 2300 volt feeder. What was the nature of that feeder change?

A. That was the change that was made, the way the original wiring was, it went out through a window, and it was open wiring. Now it is in conduit.

Q. Then there was a chlorinator put in there to chlorinate the drinking water?

A. That's right.

Q. The water used by the operators there?

A. And their families.

(Testimony of Silas E. Yeager.)

Q. What was the reason for that being put in there?

A. Originally the water was taken from the canal and it was pumped to the Milwaukee Railroad water tank, and the houses were tapped off of this main line to the Milwaukee Railroad, and at the time the company took over they tested the water in the canal and it tested polluted, so [279] they put in a chlorinator so that there would be none of that afterwards.

Q. To insure an unpolluted——

A. Domestic water.

Q.——water supply. Was there any change made in the three residences that the operators occupied there, after it was taken over, painting or anything of that sort? A. Well, they were repaired.

Q. Were they repainted? A. Yes.

Q. The cottages there were repaired and repainted and put up in shape? A. That's right.

Q. Now, you mentioned the fact that your records there showed the amount of power used in pumping for the Priest Rapids Irrigation District. Was that shown by anything there at the power plant?

A. No, that was shown by the meter readings at the Coyote Pumping Plant.

Q. And who supplied you with that data?

A. The operator of the pumping plant at Coyote.

Q. So actually your record as to the amount of power that was utilized for the pumping at the Priest Rapids Irrigation District was simply the

(Testimony of Silas E. Yeager.)

information furnished to you by the District man at the pumping plant who was operating the plant there? [280]

A. That's right.

Q. That was not records that were kept or available at the power plant itself?

A. The pumping station at Coyote kept a record of their meters as it was fed in, and at the end of each day, the twenty-four hour meter reading was transmitted to the Priest Rapids operator.

Q. Well, the point I'm making is this; that that was not records which you kept at the pumping plant, but was records which was kept by the Priest Rapids Irrigation District itself, and 'phone up to the plant?

A. No, at the pumping plant, right from the pumping plant——

Q. Yes.

A. ——and it was 'phoned to the operator on shift at the Priest Rapids station, and that was recorded, and then at the end of the twenty-four hours it was transmitted to the dispatcher of power at Pasco each day, and there was a record kept; that is, the total of the twenty-four hours was kept at the Priest Rapids, on these sheets, and there was an hourly record kept at Priest Rapids, or at Coyote, I mean.

Q. And those records were simply added to the records which you kept at the pumping plant as they were 'phone in?

A. We never had anything to do with those records. [281]



(Testimony of Silas E. Yeager.)

Q. They do appear on your records there?

A. They were 'phoned to us.

Q. I say, those records, you did not keep them yourself, they were 'phoned to you?

A. That's right.

Q. And then you simply transcribed them on your records as they were reported to you by 'phone?

A. That's right.

Mr. Ramsey: I think that's all.

### Redirect Examination

By Mr. Powell:

Q. Which three residences were there that were occupied by the operators?

A. The three residences or cottages that are now designated as cottage number 1 and number 2 and number 3.

Q. And they are the ones closest to the power plant?

A. That's right.

Q. We saw them yesterday, painted yellow, are they not?

A. Yes.

Q. How are those—how are they equipped? Do they have a telephone system?

A. They have a local telephone that goes to the station, and connected in series with each other.

Q. They're connected by telephone to the station and with each other?

A. Yes, around the same line. [282]

Q. And do they all have electricity?

A. Yes.

(Testimony of Silas E. Yeager.)

Q. Do they all—what about running water?

A. They all have running water.

Q. Inside plumbing?

A. Inside plumbing and sink; practically modern.

Q. Bathroom fixtures? A. Yes.

Q. How large are they?

A. In rooms, or dimensions?

Q. Rooms.

A. Well, the number 1 cottage is four rooms and a bath, that's when the District had it, and then there was a front porch and a back porch, and the number 2 cottage was three bedrooms, a kitchen, and a sitting room, and a bath, and it had a back porch and a front porch, and the number 3 cottage has four rooms and a bath—five rooms and a bath.

Q. How are they heated?

A. The number 1 cottage was—it is wired for electric heat, that is, it has the 220 volt wiring system for electric heat; the rest of them are heated by stove.

Q. During any of the time that you were there, Mr. Yeager, was any of the power used for irrigation at the plant?

A. While I was there, while the District run it, there was a [283] farm, ranch, that they pumped water to, this farm at Priest Rapids.

Q. It pumped water to the farm at Priest Rapids? A. Yes.

(Testimony of Silas E. Yeager.)

Q. Now, where is the pump?

A. It is on the second floor, or lower floor; the transformer floor.

Q. On the transformer floor of the power house?

A. Yes, on the same level as the transformers were.

Q. Now, there is a pipe line that is suspended below the walkway into the plant; is that the pipe line?

A. Yes.

Q. And that was used for irrigation, is that right?

A. Yes.

Q. Where did you get the water?

A. Out of the canal.

Q. Now, in reference to the meters at Coyote——

Mr. Ramsey: Just a moment, Mr. Powell. In regard to the question you've just been asking, do I understand this was land belonging to the District that was irrigated by those facilities?

Mr. Powell: I don't think so; I am not sure.

Mr. Ramsey: Then I object to the entire line of questioning, not having anything to do with the Priest Rapids Irrigation District. [284]

Mr. Powell: I think they owned the pump and motor.

Mr. Ramsey: Well, I would want some evidence of that kind before I would not object.

The Court: I will overrule the objection, and let it stand.

Mr. Ramsey: Exception, please.

(Testimony of Silas E. Yeager.)

Redirect Examination

(Continued)

Q. Mr. Yeager, in reference to the meter reading at the Coyote pumping station, who was the operator of the pumps at Coyote during 1942?

A. Leonard Collins.

Q. C-o-l-l-i-n-s? A. I believe so.

Q. Do you know where he is now?

A. I think he has a place at Selah, or at Zillah.

Q. At Zillah? A. Yes.

Q. And did you ever check the meters at Coyote yourself? A. No.

Q. You never have? A. No.

Q. Have you ever seen the meters there?

A. Yes.

Q. And what records, if you know, were kept at the Coyote Pumping station? [285]

A. Records similar to our daily log sheet, except that it just had the incoming meters, no outgoing meters entered into it.

Q. Just a little louder, please.

A. The meters that metered the incoming power or current.

Q. And all the records that were 'phoned in to you, were they entered in the records that you have identified. A. Yes.

Q. And can you state whether or not they are correctly entered as 'phoned to you?

A. To the operators. At any time that there was an interference on the high line, why, we would have

(Testimony of Silas E. Yeager.)

to pick them up later on, either in person or through 'phone, but they were delivered to the Priest Rapids station and entered, so that they could be made up and turned in to the dispatch office at Pasco.

Q. When you say they were delivered, how were they delivered?

A. Well, the chief operator would go to Coyote and pick them up, that is, get the figures.

Q. Have you ever done that? A. No.

Mr. Powell: That's all.

Mr. Ramsey: That's all.

(Whereupon, there being no further questions, the witness was excused.) [286]

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## B. SALVINI

a witness called on behalf of the defendant, resumed the stand and testified as follows:

### Direct Examination

(Continued)

By Mr. Powell:

Mr. Powell: May I ask, Mr. Reporter, if you can give us the last question and answer?

(Whereupon the reporter read the last previous question and answer of this witness, as follows:



(Testimony of B. Salvini.)

“Question: Does it show the main canal?

Answer: It shows the main canal, the existing canal that there was there in 1943, from Coyote Rapids down to the end of the canal, down below Hanford.”)

Q. Do you know how many miles of canal there was there, Mr. Salvini?

A. Well, I never seen any measure, but we thought all the time it was around fifteen miles.

Q. The main canal?

A. From Coyote Rapids down to the end of the canal.

Q. From Coyote Rapids down to the end of the canal. Now, were there any laterals?

A. Yes, we had several laterals.

Q. Where did they go?

A. Well, we had one serving the White Bluffs area.

Q. One serving where?

A. The White Bluffs area; then there was another one serving [287] another area lying down south of White Bluffs and north of Hanford, between Hanford and White Bluffs; then we still had another pipe line coming out just west of Hanford, that was serving the land situated west and north of the town of Hanford.

Q. How many miles of pipe line did you have?

A. I don't know; I know we had quite a few pipe lines, but I don't know the amount.

Q. You don't know the mileage of it?

A. No.

(Testimony of B. Salvini.)

Q. Was the area that was irrigated all in one solid block? A. No.

Q. How was it located with reference to the main canal?

A. The area that was irrigated was mostly the land that used to be served by the old Hanford Irrigation and Power Company, and most of those lands where they was getting water, because they had the facilities when we took it over from the receiver, and we made not very many big improvement outside of just keeping up those and the repair, so a lot of places there wasn't any facilities to irrigate the land.

Q. In a lot of places there were no facilities?

A. In a lot of places there were no facilities.

Q. From the canal?

A. From the canal. [288]

Q. And where did those farmers get water?

A. Quite a few get water from a well, where they were pumping.

Q. How did they pump?

A. Well, they had a motor and pump.

Q. Electric motor?

A. Electric motor, most cases.

Q. Where did they get the power to do that?

A. Well, they get the power through the Pacific Power and Light Company.

Q. Pacific Power and Light Company, is that correct. A. Yes.

Q. Did the Priest Rapids Irrigation District sell any power at retail; I mean sell any retail power to customers? A. No.

(Testimony of B. Salvini.)

Q. Did you sell power wholesale? A. Yes.

Q. To whom?

A. To the Pacific Power and Light Company.

Q. Now, do you know how many acres of land were being irrigated from the canal in 1943—let's say in 1942?

A. There's around 1200 acres that was irrigated from the canal.

Q. Can you get the exact acreage?

A. Well, probably the secretary I think has got the right acreage. [289]

Q. That is Mr. Reiersen?

A. Mr. Reiersen.

Q. And that will show on what?

A. That will show on what land was irrigated by the canal.

Q. And where will that show, in the assessment rolls?

A. Not the assessment roll, but from the receipts of the water paid during that year of the different land owners.

Q. Referring to Exhibit 1, Mr. Salvini, the map, there appears to be quite an acreage of land under or between the canal and the river. Was all of that land within the irrigation District?

A. You mean from Coyote Rapids down to the end of the canal?

Q. Yes.

A. No, not all of that land was under the Irrigation District. All the land of the District is down

(Testimony of B. Salvini.)

north of the canal, but not all that land is under the Irrigation District; some is excluded.

Q. Mr. LaFramboise, could you put this up somewhere? Do you mean, Mr. Salvini, that all the land that is in the Irrigation District is below the canal, that is, between the canal and the river?

A. Yes.

Q. But not all of the land between the canal and the river is in the Irrigation District? [290]

A. That's right.

Q. I wanted to see if I make myself clear on that, your Honor. Would you come down to the map, Mr. Salvini, please, and point out the location of the various District facilities? First, indicate on the map, if you will, please, where the main canal is located.

A. On the map the main canal starts here, the pumping plant at the Rapids, and this heavy line in here, kind of crooked someplace, that comes down this way and then down here.

Q. And that's the canal you said you understood was fifteen miles long, is that correct?

A. Well, we heard it was that. I never did measure it. We heard it was around fifteen miles.

The Court: I might call counsel's attention to the fact that if the witness does not identify what he's pointing to on Exhibit 1, his testimony will be meaningless to an appellate court. If he says "beginning here" and "going here" they wouldn't know what he's talking about.

(Testimony of B. Salvini.)

Q. Thank you. Indicating the map again, is there a location on the map shown as Coyote Rapids, or Coyote Pumping Station?

A. Right there.

Q. And what is the mark that appears there? Does that indicate Coyote Pumping Station? [291]

A. Yes.

Q. It does; and is that where the heavy line starts, and proceeds to the right and down on the map?

A. That's the one.

Q. And the lower right hand corner is the lowest heavy line, is it not?

A. Down here.

Q. Yes. Now, where were the laterals, just generally?

A. Well, the lateral one is starting right up here.

Q. When you say "up here" you mean——

A. Up this bend up here, of the canal.

Q. That is the point where the canal reached the farthest north?

A. This would be going down south east, so at the point up here where it turns, well, there's a pipe line that goes down in this direction and irrigates the land.

Q. Which direction, Mr. Salvini?

A. Well, it goes down up here into this section.

Q. It is to the right of that point marked by number 21, is it not?

A. Well, I know from here it comes down to this section here.

Q. When you say "from here" the reporter can't get that in the record, Mr. Salvini. Could you identify it otherwise?



(Testimony of B. Salvini.)

A. Well, I think you go north, I mean east, in an easterly [292] direction, and after you cross over about three thousand feet, well, it started using water out of that pipe, then it would be clear down to the river, that whole section, and this one laying east here, then, is a pipe line that goes up north from the other section up here, laying 'way up north, along the river.

Q. And where is the next lateral?

A. The next lateral, it starts just about on this section line somewhere.

Q. That is the section line indicated "SW" or "WB"?

A. SW or WB, yes, and it goes on an eastern direction, easterly direction, until it gets down to section up here, where "WB" is marked on the map.

Q. That's about where the "B" is in "White Bluffs"?

A. Yes, and up there it come out of the ground, and is a dirt ditch just running down kind of a south easterly direction, and it reaches over, reaches down to the Section 15. It feeds practically all of the land that is taking water out of that lateral; then we got another pipe line that I did not mention before, and it started down just before we get to that Diver place, it's about four miles south west of White Bluffs, and that is a canal that goes down and up for about a mile, and then there's a syphon in there about a thousand feet long, going east, and it throws up the water on section, I think it [293]

(Testimony of B. Salvini.)

is called Section 16, and then they go down and irrigate part of Section 15 and 16 that is not irrigated, by the other lateral that comes down the other way; and the last pipe line in this is down about a mile west of Hanford and it's just about a mile long, that one, and it come out and throws out the water just about a mile west of Hanford, and that water will go backwards, go west, kind of northwest, clear over where the other pipe line, this will go and reach the land up there at that time, and that's what most of the irrigated land was, because down below Hanford it was the main canal that was irrigated.

Q. That is, they took water directly from the main canal?

A. They took water from the main canal. There was little flumes and little laterals, but not any syphons.

Q. Now, the squares marked on the map, Exhibit 1, are to indicate what?

A. Those squares?

Q. Yes. A. I suppose it's sections.

Q. Well, you can see the townships and ranges marked down there, can't you? They would be clear down at each square on the map, and indicate a section which would be a mile on the side, is that right?

A. Well, it would be a mile each side. [294]

Q. And when you indicate, Mr. Salvini, that one of the laterals took off from the main canal about four miles south and east of White Bluffs, that point can be indicated by counting the squares on the map, can it not?

(Testimony of B. Salvini.)

A. Just about; it is nearly always four miles because I know it is down below that here.

Q. Now, while you're there at the map, Mr. Salvini, would you indicate where the power plant was located? Does it show on the map?

A. It is right here.

The Court: Is it labeled "power plant" on there?

Mr. Powell: Yes, sir.

The Court: Well, that's sufficient, I'm sure.

### Direct Examination

(Continued)

Q. And the words "power house" are printed there, are they not?

A. Yes, the word "power house" is printed right there at that place.

Q. And is there anything to indicate the transmission line there?

A. Yes, this line up here I think indicates the transmission line there?

A. Yes, this line up here I think indicates the transmission line.

Q. And is there anything on the map to indicate?

A. Well, it indicates the 66,000 kilowatt transmission line, down as far as about a mile and a half west of Coyote plant. [295]

Q. That's 66,000 volts, isn't it?

A. Yes, 66,000 volts.

Q. Not 66,000 kilowatts, is it?

A. No, that's volts.

(Testimony of B. Salvini.)

Q. Then what was there at the Coyote Junction?

A. Up here it's a place where our transmission lines hook up with the Pacific Power and Light Company.

Q. Now, you're pointing at the map and saying "here"; you mean that place that is designated Coyote Junction?

A. Well, it's about a mile west, mile and a half, I guess it is, west, and that's the branch line that goes down to Coyote Junction; that transmission line goes down in an easterly direction until it reaches the place where the pumping station is.

Q. Now, was that line in there in 1943?

A. Yes.

Q. Was it being used? A. Yes.

Q. Now what did you do at Coyote Junction? That is, what was the purpose of Coyote Junction?

A. Well, that's the place where the water—I mean the extra power, that we sell, is diverted over to Pacific Power and Light. There's a switch right there.

Q. Was there a connection there with the Pacific Power and Light Company line? [296]

A. Yes.

Q. Were there any transformers there?

A. Well, I don't know just what you mean, but there was all the necessary equipment there that made the change.

Q. And then what power was transmitted over the line from Coyote Junction down to the pumping plant?

(Testimony of B. Salvini.)

A. Well, we just took down what we was using at the pumping plant. The rest was going over the line of the Pacific power.

Q. What other properties did you have at Priest Rapids Power Plant besides the power house and equipment? That is, were there any residences there?

A. Well, we had three residences, and there was all the shore land clear up to the intake, up there, the natural intake that was up about two miles or better up above the power plant, and all the land except that dam site ranch that was up there at Priest Rapids, just west of Priest Rapids, and we had the other land up above it, clear up to the head of the canal, laying down east of the Milwaukee right of way.

Q. The land between the Milwaukee Railroad and the river, or the power canal?

A. Uh huh.

Q. Do you know how many acres of land there were there?           A. No. [297]

Q. Had the land ever been developed?

A. Well, there was part of that, that dam ranch, they used to farm it; they used to rent it, probably, oh, around a hundred acres, because it was easy for them to water. It was adjoining the north side of the place. That's all I remember that was farmed.

Q. There was a farm, then, being operated at the power house, near the power house?

A. That's the one.

Q. Was that farm owned by the District?

A. No.



(Testimony of B. Salvini.)

Q. And the District land was farmed by the farmer who had this other farm, is that correct?

A. Yes.

Q. How much land of the District's would you say that he was farming?

A. Well, after the District took it over, I think that they never—they changed owner up there, or operator, and they just quit irrigating, less land and less land, and so I couldn't tell just right how much it was, but there was around a hundred acres up there that was irrigated and farmed by those people.

Q. Around one hundred acres of land owned by the District, is that right? [298]

A. Uh huh.

Mr. Powell: We did not introduce identification 2. May I ask leave to withdraw identification 2, that was a tabulation of water readings, and we'll make another tabulation.

The Court: Yes.

(Whereupon, Defendant's Identification 2 was withdrawn.)

(Whereupon, tabulation of property and water rights was marked Defendant's Exhibit No. 3 for identification.)

### Direct Examination

(Continued)

Q. Now, Mr. Salvini, you maintained, the District maintained, did it not, a power canal on its property, from the intake down to the power plant?

A. Say it again, please.

(Testimony of B. Salvini.)

Q. The district had a power plant on its property, did it not, from the intake of the canal down to the power plant? A. Yes.

Q. And that canal right of way was on your property, is that correct? A. Yes.

Q. And what about the transmission line, whose property was that on? [299]

A. Transmission line to come down to Coyote?

Q. Yes.

A. Well, that, we had an easement.

Q. And from there to the pumping plant?

A. Yes, down to the pumping plant.

Q. And what about your main and lateral canals?

A. Well, I suppose we had a right of way.

Q. They had been in there for how long?

A. I was told they been in there since 1908.

Q. You know they have been in there since 1917?

A. 1917 I know they was there.

(Whereupon, permit by War Department to Hanford Irrigation and Power Company was marked Defendant's Exhibit No. 4 for identification.)

Mr. Powell: We offer, if your Honor please, defendant's identification 3 in evidence, which is a tabulation on page 2 and 3 of parts B and C of the property described in the Declaration of Taking, and in part A, water rights as shown by exhibit for identification 4, and four other certified copies of appropriations that we have.

(Testimony of B. Salvini.)

Mr. Ramsey: Objected to, if the Court please, as to Exhibit 3 on the ground and for the reason that the so-called exhibit is nothing more than the defendant's own tabulation of what it alleges [300] to be certain rights, together with a portion of what purports to be a description of real property and rights of way under the Declaration of Taking. I wouldn't so strenuously object to the excerpts from the Declaration of Taking, as a separate exhibit, although I think that is objectionable, since the interest taken in toto under the Declaration of Taking should certainly be set out together with the description of the land; but the so-called water rights here are matters for proof, purely, and this constitutes a statement of what counsel contends to be his water rights.

The Court: May I see it? This objection will have to be sustained, as to not being evidence of the rights of way of the District. If proof is made that the defendant has these water rights and rights of way, then this tabulation would be proper, I think, for the convenience of the jury in listing those in a convenient form of reference.

Mr. Powell: I think your Honor is correct, and for that reason I am offering identification 4, a certified copy of the original War Department permit, the first item mentioned in the exhibit for identification 3, and the four certified copies of the four filings as they appear in items 2 to 5 inclusive on page 1.

(Testimony of B. Salvini.)

(Whereupon, Assignment of Water Appropriation by Burch was marked Defendant's Exhibit No. 5 for identification.) [301]

(Whereupon, Assignment of Water Appropriation by Haynes was marked Defendant's Exhibit No. 6 for identification.)

(Whereupon, Notice of appropriation of water by Hanford Irrigation and Power Company, November 13, 1908, was marked Defendant's Exhibit No. 7 for identification.)

(Whereupon, Notice of appropriation of water by Hanford Irrigation and Power Company, November 20, 1909, was marked Defendant's Exhibit No. 8 for identification.)

Mr. Powell: I have merely taken the information from those to put into this list, if your Honor please, and it is not my intention by the use of the words "water rights" to establish any right in connection with the identification. I did it purely for convenience, because there they're all together, and here they're in separate sheets.

The Court: Oh, I see. Is there any objection to these?

Mr. Ramsey: Your Honor, I would ask that the motion for admission of those exhibits be held in abeyance until recess time, until I have an opportunity to look at the documents. I have not yet seen the documents and I don't know whether there is objection or not.

(Testimony of B. Salvini.)

The Court: Well, shall we defer them until after the recess, and perhaps Mr. Ramsey can look those over. [302]

Mr. Powell: I might ask if there is any objection on counsel's part to the introduction of parts B and C, which is information taken from the Declaration of Taking?

Mr. Ramsey: Yes, your Honor, at this time there is. I might not want to insist on that objection later, but I do object to it at this time upon the ground that it is totally improper to set out as a separate exhibit a description of land without setting out therein as taken from the Declaration of Taking the interest acquired by the government under its Declaration of Taking in the lands. As it stands it simply stands as a description of land without any description of the interest acquired.

The Court: Well, I think we had better put this aside for the present and go back on those identifications.

Direct Examination

(Continued)

By Mr. Powell:

Q. When did you first see the power canal, Mr. Salvini?

A. Oh, it's around 1920, I think.

Q. 1920; and was the power canal being used then, the power plant being operated?

A. Yes.



(Testimony of B. Salvini.)

Q. How often did you see it from the time you became a director in '32 until you left the project in May of '43?

A. Oh, then, since 1932 well we went up there quite often, sometime we went up every month, every two months, sometimes every week, just depends what things arise. [303]

Q. And were there any changes made on the power canal in recent years?

A. Oh, there was quite a few changes.

Q. What was the nature of them?

A. Well, right after the District took it over, well, we had quite a work done to level it up, to level up the bottom of the canal; in some places there was some humps.

Q. There were some humps in the bottom of the canal?

A. Bottom of the canal, and that was around at the time that we put in that new wheel at the power house; then we worked from 1939, I think it was '39 and '40, and it is still—'41, we cut another entrance to the river.

Q. You cut another entrance to the river, is that right?

A. Yes.

Q. What was the purpose of that?

A. Well, the other one that is up along the shore, that middle channel, it is a little higher than the bottom of the canal down below, and naturally when the water was down low it wouldn't come in at all, so before we cut that channel, why, they wouldn't be able to generate juice all the year

(Testimony of B. Salvini.)

around, but after we did that, it was supposed to generate power all the year around.

Q. Was there a time when you couldn't generate power at all?

A. Well, I think there was some winters that probably we closed down a month or so for repairs, or maybe just because the water was being down too low, or some needed repairs. [304]

Q. After you cut this new channel to the river was it necessary to close down?

A. No, we never did close down for lack of water since we started to use that channel.

Q. How long has it been since you've been over there?

A. Oh, I didn't was over there since spring of 1943.

Q. And have you been there at any time so that you could walk out on to the edge of the present power canal, at the intake?

A. I never was at the intake any more.

Q. Well, were you there in '43?

A. Well, we was there in '43, in the spring of '43, I think around February, the month of February.

Q. Is it possible to see and identify the intake of the power canal, Mr. Salvini?

A. If you are in the right place on the opposite shore, why, you could see it, all right.

Q. I mean the first original intake.

A. Oh——

Q. Can you walk right out to it?

A. Yes.

(Testimony of B. Salvini.)

Q. And there is some sort of a roadway built up there, is there? [305]

A. Oh, there used to be.

Q. What is that for? A. That road?

Q. Yes.

A. Well, that road, must have used it from the District when we were working up there, and then when there's no water in the center well somebody could have travelled up, some Indians, that's why that road in there.

Q. No, I'm referring to the roadway from the bank of the roadway out to the entrance of the canal.

A. No, that was just used by the District.

Q. Then where is this new channel that was cut through, from the intake of the canal, the old canal?

A. Well, you come down about 2500 or 3000 feet and there it's cut through that ridge that lays between that natural channel that's up there along the river, that you could see up at the head of the canal, but you won't see that cut unless you are down right facing this one, because the land up there is some brushes were there, used to be; you got to walk down up there so you could see the channel across.

Q. That's about a half a mile, then, below the intake of the canal?

A. Not quite half a mile, I don't think.

Q. By the way, is there a dam up there? [306]

A. Well, there's a dam right there, the dam is where this cut-off is made.

(Testimony of B. Salvini.)

Q. And how far below the old intake is the dam located?

A. Well, it's right there at this cut we made. This cut is just inside the dam.

Q. And how did the District do this work, this improvement?

A. Well, we give out the contract for this work. The District didn't do the work, that was done by contract.

Q. Do you know whether or not, Mr. Salvini, after you did this work you got better or less power production?

A. Oh, we got better power production. It was shown by the book up there at the plant, registering up there.

Q. Did you do all the work at that time that was planned?

A. No, we had some more, couple of places yet on the canal to dig out.

Mr. Ramsey: Just a minute. If the Court please, I object to testimony as to plans that were never acted upon.

The Court: I'll sustain the objection.

### Direct Examination

(Continued)

Q. Was any work done at that time on the dam?

A. On the dam behind that cut?

Q. Yes.           A. No.

Q. Was any work done on the bottom of the canal?           A. Yes. [307]

(Testimony of B. Salvini.)

Q. Is there a spillway in the canal, part way down?      A. Yes.

Q. What is the purpose of that spillway?

A. Well, whatever, at the high water, when there was too much water to come down at the plant, they won't be ready to take it, why, if we didn't have that spillway, we would be flooded out, so the purpose of that cut-off is to get rid of the extra water that we don't need down there.

Q. During extreme high water, is that right?

A. Yes.

Q. How did it work?      A. Worked good.

Q. Well, that is, did the water back up from the power house?      A. Oh, yes.

Q. Where did the spillway lead to?

A. Well, it leads back in the river; the gates are closed down there, they're just taking the water that the wheel needs, and the balance of the water just finds that spillway up there and goes out in the river.

Q. Do you know how much water is carried in the canal?

A. No; I heard about it, but I don't know.

Q. Have you examined the three residences that you referred to as being District property?

A. Yes. [308]

Q. Have you been in all three of them?

A. Yes.

Q. You weren't here in court to hear Mr. Yeager's description of them, were you?

A. No.



(Testimony of B. Salvini.)

Q. What kind of residences are they?

A. Well, the two first residences laying just east of the canal, those were first class shape, put up a new roof on the second one just the year, the spring, that we left over there. The third one laying out west about five or six hundred feet from the power canal, well, that one needs some repairs that spring, but we had a workman up there that was working at the time, but we had to quit, but all three were occupied just the same. I think Mr. Yeager was living in this third one that I spoke about at the time, in 1943.

Q. Were they equipped with electricity and running water?

A. Yes.

Q. Was there a telephone system there?

A. Yes, we had a telephone system, and it was—forget just what kind of a connection we had with the railroad, too.

Q. You had a telephone connection also with the railroad?

A. Yes.

Q. Now, Mr. Salvini, have you qualified at any time as an expert witness on real estate values in this case, in this court? [309]

A. Not in this case, no.

Q. I don't mean in this particular case, Mr. Salvini, that is, the one we're trying today; in some of the land cases from Hanford?

A. Yes.

Q. And as part of your duties as a director of the Priest Rapids Irrigation District do you have to value real property?

A. No, we didn't.

(Testimony of B. Salvini.)

Q. Well, how do you fix the fair market value of farm lands, yourself?

A. Well, we just knew what it was, but really we didn't try to appraise that land up there at Priest Rapids.

Q. Oh, you did not appraise the houses at Priest Rapids?      A. No.

Q. Those have never been appraised by you?

A. No.

Q. But what I was asking, Mr. Salvini, if you do know the values of real properties generally in the Hanford area.      A. Yes.

Q. And what is the closest settlement to the Priest Rapids settlement that might have residences for sale.      A. It would be down at Midway.

Q. Well, Midway is owned by the Bonneville Administration, isn't it?      A. Yes. [310]

Q. I don't think they would have anything for sale but power, Mr. Salvini. Wouldn't White Bluffs and Hanford be the closest communities?

A. Yes, the next would be White Bluffs and Hanford.

Q. And would you be familiar with the values of real property at White Bluffs and Hanford?

A. Yes.

Mr. Ramsey: Objected to for the reason that the value of property in towns is in no wise comparable with the value of residences where there are three residences, separated from any settlement by, I don't know, twelve or fifteen miles, I suppose, and

(Testimony of B. Salvini.)

where they have no use whatever except as residences for the operators of the power plant itself.

The Court: Well, somebody has to value them. You have to get the closest to it you can, it seems to me.

Mr. Ramsey: Well, the point I am trying to make, if the Court please, is this: I can't conceive how we can fix the values of these particular houses, which were built here for one purpose and had only one purpose for which they could be used, on the basis of fair market value of properties down in the town. I think we're going to have to use another approach. No man would buy one of those [311] houses, because it would be on Priest Rapids Irrigation District lands. He couldn't buy the land that went with it. It was in an isolated district where he would have no purpose at all in being unless he was working for the Priest Rapids Irrigation District.

The Court: Yes, I get your point. I think we'll recess now for ten minutes.

(Short Recess)

(All parties present as before, and the trial was resumed.)

(Whereupon the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I might say, before we call in the jury, I wondered if there is any real question or contest about the District owning the land that is

set out, the property that is set out and described in the Declaration of Taking?

Mr. Ramsey: Oh, no, your Honor, there is no contest on that point.

The Court: Is there any objection to these exhibits? I presume—I haven't looked over them in detail, they're offered as evidence of the acquisition of water rights by the District?

Mr. Powell: Yes, your Honor. [312]

Mr. Ramsey: Yes, your Honor, there is certainly a number of objections to that, and I would like to be heard on them, and I presume should be heard in the absence of the jury.

The Court: Well, that's what I thought. That's the reason I mentioned it before they came back in here. Before we go to that, on this matter of the houses down there, what you proposed to do, I presume, Mr. Powell, was to value them separately, or have this witness testify as to their value separate and apart from the rest of the power plant property there?

Mr. Powell: The main reason of having the witness testify to the value of the houses was that I felt that the witnesses we had to value the other properties would be including in their over-all figure some figure for the residences, and there should be some basis for that figure; not to have a separate value for the buildings, but somebody who is familiar with them, to give the value of these buildings as part of the power property.

Mr. Ramsey: My theory is that that is the only manner in which they can be valued, as to their

use value or increment value with the other properties of the District. There could be no demand or value separate and apart from that, except salvage value of the lumber, or something of that sort. [313]

The Court: But it is necessary to place some value on this property as a whole, the power plant properties there, and I see no reason why that has to be done by each witness as a whole. For instance, this witness may know about values of dwelling houses; he knows nothing about values of generators or dynamos; some other witness knows about generators and dynamos and doesn't know about the houses, and it is the practice, I am sure, in these cases involving whole utility systems, where a Public Utility District condemns, one witness may come in and testify as to his opinion as to the value of the meters, another as to the value of the generators, and the over-all witness can adopt the other witnesses' values on a part to apply it to the whole. I would think that could be done here.

Mr. Ramsey: I am submitting that you're asking the jury to place a double value on the value of those buildings. Your power witnesses place the over-all value; you have a separate witness testifying as to the value of the buildings, which are a part of the property, and inevitably that jury is going to add to the value of the property the value of those buildings. I submit again that we can't possibly submit a value on those buildings there on the property, built for only one purpose, to house workers. Certainly no man would want



to buy [314] that and isolate himself in that canyon fifteen or twenty miles——

The Court: I understand that they have no separate cash market value.

Mr. Ramsey: Even on the valuation of a farm you don't value the buildings separate and apart. You value the entire unit, with the buildings on there. Take the buildings off and you would arrive at a different value. Certainly you don't value the house and the barn separately and then add up your totals. That's been held by every court.

The Court: I know that's true of ordinary farm property and residence property, but you're dealing with something different when you're dealing with an electric distribution system or a power plant and distribution facilities like this. With your farm, if you had a new type silo, the owner certainly shouldn't be deprived of the value simply because nobody knows it along with the rest of the farm.

Mr. Ramsey: Can we assume that these witnesses who testify on the value of power property are not qualified to state what the additional value to that property is by reason of having there three residences for the use and benefit of the operators of the property?

The Court: Well, I don't know; I haven't seen the [315] witnesses yet, or heard them qualified, but counsel seemed to indicate that what he wanted to do is to have a separate appraisal, and have his power expert adopt that and say "This property, including the houses, is worth so much"; "What

do you know about it?"; "Well, I'm taking the value that Mr. Salvini put on it".

Mr. Ramsey: Well, if the witness will do that I will certainly move to strike all the testimony of the over-all witness on the ground it isn't his appraisal and therefore should not be received at all, if he's adopted another man's evaluation that isn't his own.

The Court: Your point is that every witness must testify to the value of all of this property; you do segregate, however, you have no objection to segregating the irrigation part of the property from the power plant part?

Mr. Ramsey: No, your Honor, not at all, but we've got a peculiar situation here. Those houses, I can't see what possible approach other than including them in the total value of the property can be used. Certainly to testify that he knows the value of residences of this character in White Bluffs was five thousand dollars is no basis for placing five thousand dollars on a house built up there by the company for the use of their employee only, which would have no sale value whatever standing by [316] itself. It has a use value, built there because of the demand of the power plant. If the power plant was shut down, the value of the property immediately would be totally extinguished.

The Court: I think that this witness, as I understand it, has qualified, at least in other phases of this general litigation, as an expert on the cash market value of residence property at Hanford

and White Bluffs. Now, it seems to me, Mr. Ramsey's point is well taken that even as a part of this general power plant here that it would not be helpful or proper to show what the cash market value of these houses are, or rather would be, if they were out someplace where they would be available for use as residences for general residence purposes. I think it would be proper for you, however, since they are different in character from the rest of the power plant property there, to produce a witness, if you could, a house builder or contractor, who knows what those houses would cost, and he can put an estimate on replacement value new less depreciation, or tell what they would cost and place a value on them that way, but it doesn't seem to me you should say "If these houses were at White Bluffs they would be worth so much, and therefore on that basis we'll value them here on that basis". The objection will be sustained. I think, however, the ruling should [317] be after the jury comes in. I am just indicating what the ruling will be.

Mr. Powell: May I ask if there is any question in answer to the court's question of Mr. Ramsey about the ownership of the property by the District, this identification 3, I believe it is, we asked leave to introduce, contains a description of the property. Without that description of this real property the jury may not have any idea about what kind of property they're trying to appraise here, what land beside the power plant, pumping plant, transmission line and the canal.

Mr. Ramsey: Well, I am unable to know what value this could be to a jury in determining the value of the land. Furthermore, I assume the jury will take with them a copy of the Declaration of Taking in the case.

Mr. Powell: Never have.

The Court: The jury will take with them to the jury room the pleadings in the case, that is, the pertinent pleadings in the case, and the exhibits. It is a little awkward sending pleadings to the jury in a case of this kind, because we don't want to send them a file six inches thick, but I think certainly they should have the Declaration of Taking and the Petition and Answers, perhaps, here. Whatever pleadings counsel agree upon or the Court selects here should go with them to the jury room. [318]

Mr. Powell: That is agreeable. I didn't know that the Declaration would go in. That would show the deposit, and I didn't know that the Court would let the jury know what that was.

Mr. Ramsey: Well, I don't think the deposit bears the slightest relationship to the value, or the declaration of taking so states that isn't the basis on which the deposit is made.

Mr. Cheadle: The amended petition I think will show the description of the property, as does the declaration of taking.

The Court: I hadn't thought about the declaration containing a statement as to the estimated value of the property, the amount deposited. I think the amended petition should be best to sub-



mit to them. That could be submitted and show the descriptions, certainly. Now, coming to these offers here covering the water rights, do you have objection to that, Mr. Ramsey?

Mr. Ramsey: There is no objection to Exhibit number—well, it is a permit issued by the War Department—yes, exhibit number 4, which is a War Department permit to the Hanford Irrigation and Power Company to construct the power dam. As to all of the other exhibits the government does object. The other exhibits purport to be and I assume are, I have no reason for assuming otherwise, [319] photostatic copies of certain instruments referred to as assignments of water appropriation, one by G. A. Burch to the Hanford Irrigation and Power Company, being exhibit number 5 for identification——

The Court: Those are certified copies of the documents, aren't they, certified photostatic copies?

Mr. Ramsey: They appear to be just photostatic copies—yes, I believe they are certified to by the County Auditor of Yakima County. The objection is not interposed on that ground, however, your Honor. Exhibit number 6, being entitled "Assignment of Water Appropriation, W. B. Haynes to the Hanford Irrigation and Power Company"; Exhibit number 8, being entitled "Notice of Water Appropriation, Hanford Irrigation and Power Company to the public"——

The Court: What was that last one?

Mr. Ramsey: "Notice of Water Appropriation, Hanford Irrigation and Power Company to the



Public"; Exhibit number 7, being a notice of appropriation of water, Hanford Irrigation and Power Company to the public. Now, taking exhibit number 6, this is an assignment from W. B. Haynes to Hanford Irrigation and Power Company.

(Whereupon, Mr. Ramsey read defendant's exhibits for identification 5, 6 and 9 to the Court.)

Mr. Ramsey: I don't know whether counsel and the [320] Priest Rapids Irrigation District plans on selling the Columbia River back to the United States or not. Apparently that is their purpose. I don't know whether there is any water left in the stream that isn't being claimed by the Priest Rapids Irrigation District at this time. If so, the normal flow of the stream is greater than I thought it was.

(Whereupon, Mr. Ramsey read defendant's exhibit for identification number 8 to the Court.)

Mr. Ramsey: Now, we have a total of fifty—sixty one thousand second feet of water claimed, I assume, by the Priest Rapids Irrigation District. I want to first call the Court's attention to the fact that the Columbia River is a navigable stream, and as such navigable stream it is not controlled by the States bordering thereon. I don't know what the laws of the State of Washington may have been back in 1905, 1906 and 1909, when these so-called filings were made, but whatever it may have been, it could not have operated to have vested in

any person a water right in the Columbia River, which is a navigable stream without any question, and completely under the control of the government of the United States.

Now, all, apparently, that was done was that these men went out and posted a note on a rock or post along the river, claiming therein, some forty years ago, sixty [321] one thousand cubic feet per second of the flow of the river. If that is sufficient to vest a water right, then I don't know why this country isn't filled with millionaires who had the bright idea of filing on the full flow of those streams, and then telling the world "this is my water. You will pay me for it". The only interest in this whole set-up that takes a minute's notice of this Court or anyone else as a basis for claiming a water right or an interest in water is the permit from the War Department to erect a power dam on the Columbia River.

The Court: That's number 4, isn't it?

Mr. Ramsey: Yes, and the only right in the nature of water right that the Priest Rapids Irrigation District has or can have under this group of documents is a prescriptive right gained by it through the diversion and utilization for forty years past of water for power at the Priest Rapids Irrigation District plant, and the water actually pumped from the river and applied to the land. There is no permit from the Federal Government to the Priest Rapids, the Hanford, the Black Rock Irrigation and Power, or any of the predecessors in interest of the Priest Rapids, granting them

any rights in the waters of the Columbia River. There isn't any Federal law that will permit a man to post a notice on the banks of one of the navigable streams of the United States, claiming a part or [322] all of that stream as his private, personal property.

The Court: I will hear from Mr. Cheadle on this.

Mr. Cheadle: May I reply, your Honor, for the defendants? First, I wish to read just one brief excerpt from the amended petition and declaration of taking. This is what the United States is taking in this action, 128-99: "All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation". That, your Honor, we submit, by any construction of clear English, covers any appropriation that may have been made, any appropriation that may have been owned by reason of assignment. Now, that is the only description of the property, but it is obviously all-inclusive of whatever water rights they may have had. I think a very brief response is all that is needed to the suggestion that Priest Rapids could not have any right to the water because it is a navigable stream. Counsel's statement is utterly irrelevant. That is a military establishment at Hanford. It is not an improvement of a navigable stream. If counsel were speaking of McNarey Dam, or Grand Coulee Dam, his point might have some bearing, but it has absolutely none here, and I add also that the Fed-

eral law is quite the contrary now, but it was changed in 1944. Not even in the improvement of navigation since 1944 will the [323] United States take water from irrigation uses, either past or prospective, but in any event it is entirely irrelevant to this case, for the United States is here acting in the exercise of its military powers, has taken these properties for military purposes, and there are cases in the books which if necessary we can brief, supporting that position. I think on water rights, your Honor, of course these are past appropriations, made before the water code of this State was established in 1917, and this is the manner in which appropriations were made. Priest Rapids does not contend it has a water right for the summation of these filings that were made, but we do respectfully submit that as assignees, whatever rights are represented by these instruments, those are the water rights of Priest Rapids, and I submit that when the United States is taking everything in the way of water rights, that Priest Rapids has, either by its own appropriation or by ownership, it is entirely in order to submit in evidence whatever papers there are that show what Priest Rapids may own by assignment.

The Court: It seems to me the government should be compelled to pay only for the water rights that were owned by the District at the time of the taking here, and the objection will be sustained to all except identification 4; exception allowed to the defendants, of course. I [324] think perhaps these offers should be repeated when the



jury comes in. The objection will be sustained to defendant's identification 3, too. As I understand it, the purpose of that will be served anyway by letting the jury take the amended petition to the jury room with them.

Mr. Powell: May I ask if your Honor felt that we had not shown that the Irrigation District owned by assignment these four appropriations referred to as identifications 5 to 8? They were all by subsequent assignment assigned to the Priest Rapids Irrigation District. I think we are in a position to show that.

The Court: I don't believe I get your point.

Mr. Powell: Your Honor stated, I believe, in ruling, that the government should only pay for such water rights or appropriations as were actually owned by the Priest Rapids Irrigation District at the time of taking. Now, if, in addition to the rights by virtue of the War Department order, they had succeeded to the rights of the Hanford Irrigation and Power Company by these four appropriations, if there were any rights it seems to me we should be entitled to what benefits there may be by reason of admitting them in evidence. If counsel comes in with a shot-gun allegation and says "We're taking all your appropriations" and then don't show what they are, it seems to me we are deprived of showing what he's taking. [325]

The Court: Well, he is taking the water rights that you have there, and as I understand it, there is no contention that you do not have a right, at least by prescription, to the water you use to run



your power plant and you will be entitled to compensation on that basis, whatever the evidence may show the value to be. It doesn't seem to me you should be permitted to show by these documents offered that you own practically all the water in the Columbia River, and are entitled to compensation for it. I think you're entitled to compensation for only what you have actually used down there. It seems to me it would be very misleading to the jury, asking them to place values on a tremendously greater amount of water than you've ever used in your operations.

Mr. Powell: Then do I understand from the Court's ruling that we would be prohibited from making any showing that we could utilize more water in the future than we have in the past? It is my understanding that the permit allows us to divert water for power purposes, or the predecessor of the Priest Rapids Irrigation District, which, being a non-consumptive use, I assume would permit us to utilize more if it were all returned to the stream.

The Court: Well, I think you would be permitted to show the value of your properties down there as they were operated at the time of the taking, or as they may [326] have been operated within the reasonably foreseeable future after the taking, not speculative, as to what might have been done ten or twenty years from 1943, but within a reasonable time after that.

Mr. Cheadle: Just for purposes of clarification, if I may inquire, am I correct or incorrect in under-

standing that the effect of the objection made and the Court's ruling is that the Priest Rapids District has only water rights by prescription?

The Court: No, I didn't say that. I said I understood there was no question about your having a prescriptive right to what has been used there. I may be mistaken about that.

Mr. Cheadle: The government contends we can only have a prescriptive right to the Columbia River water?

Mr. Ramsey: So far as your documentary evidence is concerned, certainly if you've got any water rights at all they are prescriptive, and purely prescriptive, because you have no grant of a water right from the government.

Mr. Cheadle: From which government? From the government of the United States? Do you take the position that the United States Government grants water rights?

Mr. Ramsey: You have no grant from Washington, and I certainly say you have no water right to the Columbia River. [327]

Mr. Cheadle: The Columbia River has never been adjudicated, neither has the Yakima, and as a matter of fact, the Yakima River water rights, based on documents just like those, that was the only way water rights were established. To be sure, the Yakima was 'way over-appropriated in the early days, but you can go throughout the State of Washington in what perhaps would be non-navigable streams, even in the Appalachian case, I think water appropriation makes no difference

whether it is navigable or non-navigable. I submit the United States government is not in the business and there is no law that provides for the United States government granting water rights in the Columbia or anywhere else. All that is in this exhibit that has been admitted is permission from the Secretary of War before an obstruction may be built into a navigable stream, and that is all that provides, and that is a regulation by Congress of navigable waters with regard to the placing of obstructions therein, that is all it has to do with it.

Mr. Ramsey: May I inquire if you propose to adjudicate the Columbia River in accordance with the laws of the State of Washington?

Mr. Cheadle: No.

The Court: Is it your contention that you have a water right to all of the water mentioned in these notices? [328]

Mr. Cheadle: No, your Honor.

The Court: How much, then, do you have? How much do you claim under those notices?

Mr. Cheadle: I think there must be claimed the amount which has been used in the past, plus, as your Honor has stated, for purposes of this condemnation action, I would not presume to go into the question of what Priest Rapids might have planned had it gone on operating, but for purposes of this condemnation action I think it should be conceded by the government that they have a water right to the water used in the past, and I think these filings furnish adequate basis

for assuming they have water right for such addition amount they might have used in the near foreseeable future.

Mr. Ramsey: I don't know whether these filings affect their right one way or the other.

The Court: I think that these documents probably should go in for a limited purpose. I had in mind Mr. Ramsey's point here that the defendants should not be permitted to claim compensation for all of the water mentioned in these notices or documents, but even as the basis of prescriptive right I think by showing the origin of it and the claim of title on which it would be based that they would be admissible, perhaps, and they will be admitted for the limited purpose of showing the basis of [329] the water right, which the Court is of the view should be limited to the water actually used or what could have been used in the reasonably foreseeable future, and the effect and scope of them can be limited by instruction to the jury, and the government will have an exception.

Mr. Ramsey: May the government have an exception to the admission of each and all and every one of these exhibits, and may the government further except upon the grounds and for the reason that this court, nor no court, can submit these exhibits to the jury and expect the jury not to draw the conclusion from those exhibits, regardless of any instruction the court may give, that the Priest Rapids does not have an unlimited water right which would permit future development to any degree and any extent for power purposes.



The Court: Are we ready to call in the jury?

Mr. Powell: Just one more thing, if your Honor please. On this Exhibit 4 there is a photostatic copy that appears in the county records, and the reproduction of it is so faint and so small that it can't be seen. We have an original blue print which is large, and also have a larger photostatic copy of the same thing. I wonder if as part of the same exhibit we might introduce the big blue print, or the large photostat?

Mr. Ramsey: What does the blue print represent? [330]

Mr. Powell: Just a proposed wing dam, and the blue print was attached to the original permit.

Mr. Ramsey: Objected to for the further reason that the blue print represents nothing more than a proposed development back in 1906.

Mr. Powell: That's part of the exhibit that the Court has admitted in evidence, Mr. Ramsey.

Mr. Ramsey: This goes beyond the realm of mere speculation. Here we have had an intervening 41 or 42 years since that was filed, and now it is offered to the jury for some purpose, I don't know what.

Mr. Powell: Well, we've got it in evidence now. They can't read it because it is so small.

Mr. Ramsey: And now counsel wants to make it plain so they can read it.

Mr. Powell: Well, that's too bad.

The Court: It will be admitted in connection with the identification admitted before.

Mr. Ramsey: Exception, please.

The Court: Exception allowed.



(Whereupon, map of proposed improvement was marked Defendant's Exhibit No. 4-A for identification.)

The Court: Call in the jury.

(Whereupon, the following proceedings were had within the presence [331] of the jury and one alternate juror.)

The Court: I think you had better let the record show, since the jury has just come in, that objection was sustained to defendant's identification 3, and that defendant's identifications 4, 5, 6, 7 and 8 are admitted, and 4-A, to which the government excepts and exception is allowed in each instance, for the reasons stated in the absence of the jury.

(Whereupon, Defendant's Exhibit No. 4 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 4-A for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 5 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 6 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 7 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 8 for identification was admitted in evidence.)

The Court: You may proceed, then.

B. SALVINI

Direct Examination

(Continued)

By Mr. Powell:

Q. Would you give us the last question?

(Whereupon, the reporter read the last previous question [332] as follows: "Question: And would you be familiar with the values of real property at White Bluffs and Hanford?")

Mr. Powell: I think, if your Honor please, that was in reference to the question as to the value of the houses.

The Court: Yes.

Mr. Powell: We now offer evidence of the fair market value of the residences at Priest Rapids.

The Court: By this witness?

Mr. Powell: By this witness.

Mr. Ramsey: Objected to, if the Court please, for the reason that no foundation has been laid for permitting the particular witness to testify as to the fair market value of this or any other house, and objected to for the further reason that the fair market value of privately owned property in communities fifteen or twenty miles distant would be no index whatever to the value of three cottages located some fifteen miles up the canyon in an isolated spot, and built primarily and solely for the use of the employees of the Priest Rapids Irrigation District in the operation of the power plant, and upon District lands.

The Court: Objection sustained [333]